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Attorneys for Plaintiffs MAKIYA EPPS and TESSIE HALEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MAKIYA EPPS, an individual, TESSIE
HALEY, an individual, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

SOAPY JOE'S GROUP, INC., a California
corporation; BHCW, INC. dba SOAPY JOE'S
CAR WASH; SOAPY JOE'S SAN
MARCOS, INC.; SOAPY JOE'S BONITA,
INC.; SOAPY JOE'S ESCONDIDO, INC.;
SOAPY JOE'S SORRENTO VALLEY, INC.;
SOAPY JOE'S IMPERIAL BEACH, INC.;
SOAPY JOE'S SAN YSIDRO, INC.; SOAPY
JOE'S LA MESA, INC.; SWEETWATER
CAR WASH, LLC; SOAPY JOE'S
OCEANSIDE, INC.; SOAPY JOE'S
RANCHO SAN DIEGO, INC.; LORENS
ATTHISHA, and individual, TALAL

Case No. 37-2022-00013622-CU-OE-CTL

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

Hearing Date: April 18, 2025

Hearing Time: 10:15 a.m.

Judge: Wendy M. Behan

Dept.: C-66

1 SHEENA, an individual, and DOES 1 through
2 50, Inclusive;

3 Defendants.
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1 I, JEAN-CLAUDE LAPUYADE, declare as follows:

2 1. I am the managing partner of the law firm of JCL Law Firm, APC, co-lead counsel of
3 record for Plaintiffs Makiya Epps and Tessie Haley in this matter. As such, I am fully familiar with the
4 facts, pleadings and history of the matter. The following facts are within my own personal knowledge,
5 and if called as a witness, I could testify competently to the matters stated herein.

6 2. This declaration is being submitted in support of Plaintiffs' Makiya Epps ("Plaintiff
7 Epps"), Tessie Haley ("Plaintiff Haley"), Jailene Martinez ("Plaintiff Martinez"), Ruben Agustin
8 ("Plaintiff Agustin"), Ayden Naungayan-Slaby ("Plaintiff Naungayan-Slaby"), and Zoly Moua
9 ("Plaintiff Moua") (collectively, "Plaintiffs") Motion to Approve PAGA Settlement with Defendants
10 Soapy Joe's Group, Inc., BHCW, Inc. dba Soapy Joe's Car Wash, Soapy Joe's San Marcos, Inc., Soapy
11 Joe's Bonita, Inc., Soapy Joe's Escondido, Inc., Soapy Joe's Sorrento Valley, Inc., Soapy Joe's Imperial
12 Beach, Inc., Soapy Joe's San Ysidro, Inc., Soapy Joe's La Mesa, Inc., Sweetwater Car Wash, LLC,
13 Soapy Joe's Oceanside, Inc., Soapy Joe's Rancho San Diego, Inc., Soapy Joe's Convoy, Inc., Soapy
14 Joe's Cuyamaca Street, Inc., Soapy Joe's EC1, Inc., Soapy Joe's ECB, Inc., Soapy Joe's Fallbrook,
15 Inc., Soapy Joe's Hacienda Drive, Inc., Soapy Joe's Imperial Beach, LLC, Soapy Joe's Main Street,
16 Inc., Soapy Joe's Miramar, Inc., Soapy Joe's Mission Gorge Road, Inc., Soapy Joe's Mission Gorge,
17 Inc., Soapy Joe's Mission Valley, Inc., Soapy Joe's OPCO Holdings, Inc., Soapy Joe's Paseo Del Norte,
18 Inc., Soapy Joe's PH, Inc., Soapy Joe's Sabre Springs, Inc., Soapy Joe's San Jacinto, Inc., Soapy Joe's
19 San Ysidro, LLC, Soapy Joe's Skyline, Inc., Soapy Joe's SYB, Inc., Soapy Joe's University Avenue,
20 Inc., Soapy Joe's West Vista Way, Inc., Soapy Joe's, Inc., Soapy Joe's Imperial Beach, Inc., Lorens
21 Attisha, and Talal Sheena ("Defendants").

22 3. A true and correct copy of the Stipulation of Settlement of PAGA Action and Release of
23 PAGA Claims ("Agreement") is attached hereto as **Exhibit #1**. Attached as **Exhibit "A"** to the
24 Agreement is a true and correct copy of the proposed Notice of Settlement.

25 4. A true and correct copy of Plaintiff Epps and Plaintiff Haley's January 24, 2022, PAGA
26 Notice is attached hereto as **Exhibit #2**.

27 5. A true and correct copy of Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-
28 Slaby, and Plaintiff Moua's September 22, 2023, PAGA Notice is attached hereto as **Exhibit #3**.

6. A true and correct copy of Plaintiff Epps and Plaintiff Haley's March 4, 2024, Amended PAGA Notice is attached hereto as **Exhibit #4**.

7. A true and correct copy of the March 26, 2025, proof of filing of Motion to Approve PAGA Settlement with the LWDA is attached hereto as **Exhibit #5**.

8. A true and correct copy of the JCL Law Firm, APC, “Time and Billing Journal” as of March 26, 2025, is attached hereto as **Exhibit #6**.

9. A true and correct copy of the JCL Law Firm, APC, “Transaction Summary” as of March 26, 2025, is attached hereto as **Exhibit #7**.

10. A true and correct copy of the JCL Law Firm, APC, Firm Resume is attached hereto as **Exhibit #8.**

11. A true and correct copy of a bid from Apex Class Action LLC, the Parties' Administrator, is attached hereto as **Exhibit #9**.

INTRODUCTION

12. An objective evaluation of the proposed Settlement confirms that the relief negotiated on behalf of the Aggrieved Employees and the LWDA is fair and reasonable. The Settlement is a product of informed, adversarial, and non-collusive and mediated negotiations between experienced counsel. As discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval. Accordingly, Plaintiffs and PAGA Counsel respectfully request this Court grant approval of the Agreement.

PROCEDURAL AND FACTUAL BACKGROUND

13. On January 24, 2022, Plaintiff Epps and Plaintiff Haley served Defendants and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendants for alleged violations of the California Labor Code, including California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, the applicable IWC Wage Orders. (LWDA Case Number LWDA-CM-864393-22).

14. On September 22, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-Slaby, and Plaintiff Moua filed a PAGA Notice with the LWDA and served the same on Defendants (LWDA

Case Number LWDA-CM-983253-23).

15. Following Plaintiffs’ submission of the PAGA Notices, the 65-day “waiting period” on Plaintiffs’ right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiffs that it intended to investigate the claims in the PAGA Notices. To date, the LWDA still has not advised Plaintiffs of any intent to take action with respect to the claims in the PAGA Notices.

16. On April 12, 202, Plaintiff Epps and Plaintiff Haley filed a Representative Action Complaint against Defendants in the Superior Court of the State of California, County of San Diego, Case No. 37-2022-00013622-CU-OE-CTL, alleging a single cause of action for Violations of the Private Attorneys General Act (Labor Code §2698) (the “*Epps and Haley* Action” or the “PAGA Action”).

17. On December 7, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-Slaby, and Plaintiff Moua filed a Representative Action Complaint against Defendants in the Superior Court of the State of California, County of San Diego, Case No. 37-2023-00053126-CU-OE-CTL, alleging a single cause of action for Violations of the Private Attorneys General Act (Labor Code §2698) (the “*Martinez* Action”).

18. On December 27, 2022, Defendants filed a Motion to Compel Arbitration in the *Epps and Haley* Action.

19. On July 18, 2023, Plaintiff Epps filed an Arbitration Demand with the American Arbitration Association, designated *Makiya Epps v. Soapy Joe’s Group, Inc.*, American Arbitration Association Case No. 01-23-0003-1833.

20. On July 18, 2023, Plaintiff Haley filed an Arbitration Demand with the American Arbitration Association, designated *Tessie Haley v. Soapy Joe’s Group, Inc.*, American Arbitration Association Case No. 01-23-0003-1834.

21. On March 4, 2024, Plaintiff Epps and Plaintiff Haley filed an Amended Notice of Violations with the LWDA to add an additional allegation under California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) and served the same on Defendants.

1 22. On November 4, 2024, the Parties attended a global mediation presided over by Gig
2 Kyriacou, Esq., an experienced mediator of wage and hour representative actions. In advance of the
3 mediation, Defendants provided Plaintiffs with sufficient information to properly evaluate Defendants'
4 liability exposure for civil penalties to the Aggrieved Employees. The data and documents Defendants
5 produced included, among other things, the total number of Aggrieved Employees and pay periods,
6 written wage and hour policies, and a 35% sample of time and payroll records for the Aggrieved
7 Employees. The mediation concluded with a settlement, which was subsequently memorialized in the
8 form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
9 and negotiated a long-form Settlement which is the subject of the instant motion. The Settlement was
10 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation –
11 including the risk of Plaintiffs not being able to maintain representative claims, the difficulty of proving
12 Plaintiffs' claims in a manageable trial, the merits of Defendants' potential defenses, and the significant
13 delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length
14 negotiations, with the assistance of the mediator.

15 23. On February 14, 2025, the Parties filed a Stipulation and [Proposed] Order for Leave to
16 File First Amended Representative Action Complaint. Within ten (10) days of the Court granting leave
17 to amend, Plaintiffs will file the Operative Complaint to consolidate all PAGA claims pled in the
18 *Martinez* Action into the *Epps and Haley* Action.

19 24. Upon the Court's filing of the Operative Complaint, the Parties will file a joint motion
20 requesting to dismiss, without prejudice, the *Martinez* Action. The Parties agree that although dismissal
21 of the *Martinez* Action will be requested without prejudice, all claims asserted in the *Martinez* Action
22 will be released upon the Court's approval of this Settlement and the fulfillment of its terms.

23 25. The Settlement is intended to fully and finally resolve the Released PAGA Claims
24 asserted by Plaintiffs on behalf of the Aggrieved Employees and the State of California. This is only a
25 settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the
26 individual claims, if any, of the Aggrieved Employees other than those of Plaintiffs. This Settlement
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1 does not release any claim that is not a PAGA claim.¹ Nor does this Settlement waive Defendants' right
2 to assert *res judicata* or other available defense to any asserted claim or lawsuit.

3 26. Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a copy of the
4 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
5 settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiffs will
6 submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten
7 (10) days after entry of judgment or order.

8 27. Plaintiffs have each entered into separate, standalone settlement agreements whereby
9 Plaintiffs agreed to release their individual claims in exchange for an individual settlement payment by
10 Defendants. Agreement at § I.W. Plaintiffs' release of claims is outlined in their separate agreements.
11 Plaintiffs will file these settlement agreements under seal for the Court to review in camera, at the
12 Court's request. The Parties are unaware of any other cases, including class, individual and PAGA, that
13 might be affected by this settlement.

14 THE SETTLEMENT IS FAIR AND REASONABLE

15 28. The Gross Settlement Amount of \$760,000.00 is fair and reasonable and, therefore,
16 should be approved.

17 29. Here, *without stacking* the PAGA penalties, Defendants' liability exposure is estimated
18 at approximately \$6,186,100 in PAGA penalties. Plaintiffs' expert consultant estimated Defendants'
19 exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Violation Rate	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	9,616	27.6%	\$480,800
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	9,616	27.6%	\$480,800
<i>Wage Statement Violations</i> Cal. Labor Code § 226(a)	\$50	34,830	100%	\$1,741,500

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28 ¹ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: "Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

Business Reimbursement Violations Cal. Labor Code § 2802	\$100	17,415	50%	\$1,741,500
Unpaid Wages Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	\$50	34,830	100%	\$1,741,500

30. Plaintiffs allege that Defendants failed to provide meal periods in violation of Cal. Lab. Code § 512. Specifically, Plaintiffs allege that as a result of Defendants' understaffing, Plaintiffs and other Aggrieved Employees were often required to work while clocked out during what was supposed to be their off-duty meal periods. Plaintiffs allege that their meal breaks were often cut short or interrupted to assist Defendants' customers and inexperienced employees. Plaintiffs' expert estimated the damages for this claim at \$480,800. This number was calculated by multiplying the extrapolated number of pay periods identified wherein the time records reflected a meal break violation, by a penalty of \$50. The \$50 penalty rate was used for a number of reasons in this instance. First, Pursuant to Cal. Lab. Code § 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations, off-the-clock work resulting in minimum wage and overtime violations, and regular rate violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiffs used a \$50 penalty per violation for the meal break claims. Second, Defendants argued that increased civil penalties for subsequent violations do not apply unless the plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."].) Third, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. *See, e.g. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period). Accordingly, it is unlikely that Plaintiffs would recover full penalty amounts even if they prevailed in establishing the underlying Labor Code violations. For these reasons, Plaintiffs utilized a \$50 penalty rate.

1 31. Plaintiffs further allege that Defendants failed to provide rest breaks. Specifically,
2 Plaintiffs allege that as a result of Defendants' understaffing, Plaintiffs and other Aggrieved Employees
3 were often required to work during what was supposed to be their off-duty rest periods. Plaintiffs allege
4 that their rest breaks were often cut short, interrupted, or completely missed in order to assist
5 Defendants' customers. Defendants argued that its rest period policy is fully compliant with California
6 law and that Plaintiffs' rest break claim would have mainly relied on the testimony of Aggrieved
7 Employees, making it a riskier claim. Establishing liability likely would have entailed competing
8 testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g.,*
9 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the
10 competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written
11 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*
12 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiffs'
13 own evidence confirms that the written policy does not generate uniform practices."). Considering
14 Defendants' defenses, because time records do not monitor rest breaks, and assuming rest break
15 violation occurred at a similar rate that meal break violations occurred, Plaintiffs estimate Defendants'
16 exposure for this claim to be approximately \$480,800. This number was calculated by multiplying the
17 assumed violation rate by a penalty of \$50. A \$50 multiplier was used for the same reasons as outlined
18 above.

19 32. Plaintiffs allege that the wage statements furnished by Defendants to the Aggrieved
20 Employees were facially non-compliant with Cal. Lab. Code § 226(a)(8). Specifically, Plaintiffs allege
21 that Defendants failed to include the name and address of the legal entity that is the employer on the
22 wage statements issued to Aggrieved Employees. Plaintiffs estimate Defendants' exposure for this
23 claim to be \$1,741,500. This number was calculated by multiplying the total number of pay periods by
24 a penalty of \$50. The \$50 penalty rate was used for the same reasons as stated above.

25 33. Plaintiffs allege that Defendants required Plaintiffs and Aggrieved Employees to use their
26 personal cell phones, personal vehicles, and purchase and maintain their own uniforms, all for
27 Defendants' benefit. Specifically, Plaintiffs allege that they and Aggrieved Employees were required to
28 use their personal cell phones to receive and respond to work-related communications with supervisors,

1 managers, and coworkers, assist customers with membership sign-ups, and download and use work
2 related apps. Further, Plaintiffs allege that they and Aggrieved Employees were required to use their
3 personal vehicles to travel between Defendants' locations. Finally, Plaintiffs allege that they and
4 Aggrieved Employees were required to purchase and maintain their own uniforms. Defendants contend
5 that Plaintiffs and Aggrieved Employees were reimbursed for the use of their personal cell phones,
6 personal vehicles, and purchase and maintenance of their uniforms. Plaintiffs estimate Defendants'
7 exposure for this claim to be \$1,741,500. This number was calculated by multiplying a 50% violation
8 rate by the total number of pay periods by a penalty of \$100. Plaintiffs used a 50% violation rate for
9 this claim to reflect its belief that Aggrieved Employees incurred cell phone, vehicle, and uniform
10 expenses approximately once per month Cal. Lab. Code § 2802 does not specifically provide for a civil
11 penalty amount. Thus, the \$100 penalty rate was used pursuant to Cal. Lab. Code § 2699(f).

12 34. Plaintiffs allege that Defendants failed to pay for all hours worked. First, Plaintiffs allege
13 that they and other Aggrieved Employees were required to work while off-the-clock but were not
14 compensated for this time. Specifically, Plaintiffs allege that they and other Aggrieved Employees were
15 required to perform work-related tasks before clocking in and after clocking out, including assisting
16 customers, cleaning, and checking equipment. Plaintiffs allege that they and other Aggrieved
17 Employees were not compensated for this time spent working while off-the-clock.

18 35. Second, Plaintiffs allege that Defendants failed to include non-discretionary incentive
19 compensation when calculating the regular rate of pay for purposes of overtime wages, meal period
20 premiums, and redeemed sick pay. Specifically, Plaintiffs' expert found additional compensation
21 identified as "Bonus" that was not properly included in the regular rate of pay calculation for purposes
22 of calculating and paying overtime wages, meal period premiums, and sick pay.

23 36. Defendants argued, among other things, that all Aggrieved Employees were properly paid
24 minimum and overtime compensation for all hours worked, that Aggrieved Employees were instructed
25 not to work off-the-clock, and that the additional compensation listed above is non-discretionary.
26 Plaintiffs' expert estimated the damages for this claim of unpaid wages, based on uncompensated off-
27 the-clock work and regular rate of pay violations, at \$1,741,500. This number was calculated by
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1 multiplying the number of pay periods with violations by a penalty of \$50. The \$50 penalty rate was
2 used for the same reasons as stated above.

3 37. In light of the above, the Gross Settlement Amount is approximately 12.28% of
4 Defendants' potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely
5 recovery of PAGA penalties through continued litigation.

6 38. Defendants' maximum exposure to PAGA penalties is not a realistic outcome of the
7 litigation because it fails to account for the risks of continued litigation including, but not limited to,
8 Defendants' defenses. Here, Defendants argued that they can only be assessed civil penalties for actual
9 violations of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties,
10 Plaintiffs would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane*
11 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ["Given the statutory language
12 [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
13 suffered a violation of the Labor Code by the defendant."].) To do this, Plaintiffs would need to prove
14 each Aggrieved Employee was subject to the alleged Labor Code violation. Thus, Defendants
15 contended that Plaintiffs would be required to "prove Labor Code violations with respect to each and
16 every individual on whose behalf plaintiff seeks to recover civil penalties under PAGA." *Hibbs-Rines*
17 *v. Seagate Technologies*, 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).

18 39. Lastly, the maximum penalty figure does not consider that Courts have complete
19 discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if,
20 based on the facts and circumstances of the particular case, to do otherwise would result in an award
21 that is unjust, arbitrary and oppressive, or confiscatory." (Cal. Lab. Code § 2699(e)(2)).

22 40. Given Defendants' defenses to the claimed Labor Code violations at issue, and the risks
23 and costs of continued litigation, Plaintiffs and PAGA Counsel believe that the Gross Settlement
24 Amount is fair and reasonable. This Settlement was negotiated by experienced counsel at arm's length.

25 41. The LWDA has been provided notice of this motion and the PAGA Settlement, and the
26 decision of LWDA to accept the PAGA Settlement and not oppose the motion should be given
27 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
28 protect its own rights.

1 **THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE**

2 42. PAGA Counsel seeks approval of not more than one-third (1/3) of the Gross Settlement
3 Amount (currently estimated to be Two Hundred Fifty-Three Thousand Three Hundred Thirty-Three
4 Dollars and Thirty-Three Cents (\$253,333.33)) and attorneys' expenses not to exceed \$30,000.00² for
5 reimbursement of actually incurred litigation expenses. PAGA does not have any requirements for
6 reviewing attorneys' fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
7 Settlement is a matter of contract for a contingent representation. Nevertheless, should this Court review
8 the requested attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour
9 counsel.

10 43. The requested attorneys' fees of \$253,333.33 and reimbursement of attorneys' expenses
11 of up to \$30,000.00 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated
12 a recovery of \$760,000.00, and this result justifies the requested fees equal to one-third (1/3) of this
13 recovery. At the time this case was brought, the result was far from certain. Defendants' defenses to
14 the merits of the case created difficulties with proof and complex legal issues for PAGA Counsel to
15 overcome. Here, as noted above in section IV(A), several defenses asserted by Defendants present
16 serious threats to the claims of Plaintiffs and the Aggrieved Employees. While Plaintiffs believe that
17 these defenses could be overcome, Defendants maintain that these defenses have merit and therefore
18 present a serious risk to recovery. The Settlement was possible because, in PAGA Counsels' eyes,
19 PAGA Counsel was able to persuade Defendants that there was an appreciable risk that Plaintiffs would
20 prevail on the factual and legal issues underlying liability and overcome difficulties in proof as to
21 monetary relief.

22 44. Plaintiffs and the Aggrieved Employees are represented by competent and experienced
23 counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a
24 boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage
25 and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm
26 currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Monnett De La Torre, Esq.
27 (Former Senior Associate), Sydney Castillo-Johnson, Esq. (Associate Attorney), Perssia Razma, Esq.

28 ² As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$23,987.12 litigating this matter.

(Associate Attorney), Johnny Nitti, Esq. (Associate Attorney), Tesla Stone (Senior Paralegal and Office Manager), Jennifer Heming (Paralegal), Andrew Ward (Law Clerk), Sara Chrestensen (Legal Assistant), Maria Waters (Former Legal Assistant), and Esbeidy Campos (Legal Assistant).

45. I am qualified to represent the Plaintiffs, the State of California, and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of Plaintiffs, the State of California, and the Aggrieved Employees throughout this action.

46. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 17 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

47. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients

48. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521, *Duran v. EmployBridge Holding Co. LLC* (2023) 92 Cal.App.5th 59.

49. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.) Additionally, I was named a 2025 Super Lawyer in Employment Law by Thompson Reuters.

50. PAGA Counsel were opposed in this litigation by highly capable counsel at Littler Mendelson P.C., which is a highly regarded defense firm, vigorously advocated on behalf of Defendants. In the face of such experienced opposition, PAGA Counsel was able to develop an effective case strategy to combat Defendant's defenses and negotiate with counsel for Defendants to settle the case for an amount that provides real benefit to the Aggrieved Employees with reasonable hours expended.

51. In assessing the reasonableness of the billing rates for the attorneys and staff at the JCL Law Firm, APC, the firm refers to the “Laffey Matrix” to set our hourly billing rates. *See* <http://www.laffeymatrix.com/>. The Laffey Matrix is a fee schedule used by many courts throughout the United States, including some California state courts and California Federal District Courts. The Laffey Matrix is a well-established objective source that California courts have relied on in assessing hourly rates since 2005. (see *In Re HPL Technologies, Inc. Securities Litigation*, 366 F.Supp.2d 912, 921 (N.D. Cal. 2005) (Confirming use of the Laffey Matrix adjusted to account for locality pay differentials); *Rubalcaba v. Albertson's, LLC*, No. BC528755, 2017 WL 4330597, at *4 (Cal. Super. Ct. May 25, 2017), reversed on other grounds.).

52. The attorneys and staff at the JCL Law Firm, APC, have been providing extensive class action services throughout state and federal courts in California for more than seventeen years. Since its founding, the JCL Law Firm, APC, has recovered more than \$100 million dollars for its clients.

53. When comparing the billing rates for the staff and attorneys at the JCL Law Firm, APC with the Laffey Matrix, the attorneys and staff at the JCL Law Firm, APC, either bill at or below the rate for similarly skilled and tenured legal professionals:

Name	Laffey Matrix Fee	Actual Billing Rate
Jean-Claude Lapuyade, Esq. (Managing Attorney)	\$878	\$700
Monnett De La Torre, Esq. (Handling Attorney)	\$878	\$700
Perssia Razma, Esq. (Handling Attorney)	\$437	\$425
Maria Watters (Paralegal)	\$239	\$250

54. Moreover, The JCL Law Firm’s rates are comparable to those judicially approved for other plaintiffs’ firms, such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-\$630 for non-partners), Western Comden Casselman & Essensten (rates ranging from \$670-\$750 for partners and \$300-\$500 for associates), and Blood Hurst & Rearden (\$510-\$695 for partners). See

1 Aarons v. BMW of North America, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D.
2 Cal. Apr. 29, 2014). Other Southern California courts have approved hourly rates in the requested range.
3 *See e.g., Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013)
4 (approving hourly rates of \$650 -\$800 for senior attorneys in consumer class action); *Parkinson v.*
5 *Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010)(approving hourly rates between
6 \$445 and \$675); *Faigman v. AT&T Mobility, LLC*, 2011 U.S. Dist. LEXIS 15825, *2 (N.D. Cal. Feb.
7 15, 2011)(Approving hourly rates of \$650 an hour for partners and \$500 for associates); *Richard v.*
8 *Ameri-Force Mgmt. Servs., Inc.*, No 37-2008-00096019 (San Diego Superior Court, August 27,
9 2010)(\$695 to \$750 an hour for partners and \$495 for associates); *Barrera v. Gamestop*, No. CV 09-
10 1399 (C.D. Cal. Nov. 29, 2010)(\$700 for partners and \$475 for associates); *Anderson v. Nextel Retail*
11 *Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010)(\$655- \$750 for partners and \$300 – 515 for
12 associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Sup. Ct.) (approving 2012
13 partner rates between \$550 and \$850 per hour); and *Holoway v. Best Buy Co.*, C-05-5056-PJH
14 (MEJ)(N.D. Cal.)(approving 2011 partner rates between \$825 and \$700, and associates hourly rates
15 between \$355 and \$405 an hour).

16 55. Moreover, my billing rate has been approved within the last twelve months by California
17 Superior Court judges. (*See generally Klein v. RedZone Security, Inc.*, Riverside Superior Court Case
18 No. CVRI2202841 (August 15, 2024) Hon. Harold W. Hopp B. approved a \$700 billing rate and
19 appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel; *Galindo v. PAQ,*
20 *Inc., et al.*, San Joaquin Superior Court Case No: STK-CV-UOE-2022-1799 (September 17, 2024) Hon.
21 Blanca A. Banuelos approved a \$700 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL
22 Law Firm, APC, as Class Counsel.).

23 56. My credentials are reflected in the JCL Law Firm, APC, Firm Resume, a true and correct
24 copy of which is attached hereto as Exhibit #6. Some of the major cases the Firm has undertaken are
25 also set forth in Exhibit #8.

26 57. As of March 26, 2025, The JCL Law Firm, APC incurred a total lodestar of \$79,567.50
27 for 123.4 hours worked by attorneys and staff successfully litigating this matter. I have reviewed my
28 firm's lodestar in this matter and believe the charges are reasonable and were reasonably necessary to

1 the conduct of the case. Detailed Time and Billing Journals for the JCL Law Firm are attached hereto
2 as Exhibit #6.

3 58. Additionally, the attorneys and staff at co-counsel the Zakay Law Group, APLC (“ZLG”),
4 billed \$31,342.50 for 48.40 hours successfully litigating this action. A true and accurate copy of the
5 ZLG time and billing entries is attached to the Declaration of Shani O. Zakay, Esq. filed concurrently
6 herewith.

7 59. Additionally, the attorneys and staff at co-counsel Ferraro Vega Employment Lawyers,
8 Inc., billed \$37,800 for 63 hours successfully litigating this action.

9 60. Collectively, PAGA Counsel spent a total of 234.8 hours successfully litigating this
10 matter for a total combined loadstar of \$148,710.00. Thus, the attorneys’ fee request is equal to PAGA
11 Counsel’s loadstar with a 1.7 multiplier.

12 61. PAGA Counsel’s loadstar is summarized by firm below:

13

<u>FIRM</u>	<u>Hours</u>	<u>Total</u>
JCL Law Firm, APC	123.4	\$79,567.50
Zakay Law Group, APLC	48.40	\$31,342.50
Ferraro Vega Employment Lawyers, Inc.	63	\$37,800
Total	234.8	148,710.00

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20 62. Prior to incurring costs for filing of this motion, PAGA Counsel collectively expended
21 \$23,987.12 prosecuting this action (JCL Law Firm, APC - \$10,637.08; Zakay Law Group, APLC -
22 \$9,180.00; Ferraro Vega Employment Lawyers, Inc., - \$4,170.04.)

23 63. PAGA Counsel’s out-of-pocket expenses are the types of expenses normally charged to
24 paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs,
25 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
26 therefore, should be reimbursed.

27
28 ///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 26th day of March 2025, at San Diego, California.

3
4 **JCL LAW FIRM, APC**

5 By: 
6 Jean-Claude Lapuyade, Esq.

EXHIBIT 1

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Perssia Razma (State Bar #351398)

5440 Morehouse Drive, Suite 3600

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prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Eden Zakay (State Bar #339536)

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Telephone: (619) 255-9047

shani@zakaylaw.com

eden@zakaylaw.com

Attorneys for Plaintiffs

MAKIYA EPPS and TESSIE HALEY

(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MAKIYA EPPS, TESSIE HALEY, JAILENE MARTINEZ, RUBEN AGUSTIN, AYDEN NAUNGAYAN-SLABY, and ZOLY MOUA, individuals, on behalf of themselves, and on behalf of all of all persons similarly situated,

Plaintiffs,

vs.

SOAPY JOE'S GROUP, INC., a California corporation; BHCW, INC. dba SOAPY JOE'S CAR WASH; SOAPY JOE'S SAN MARCOS, INC.; SOAPY JOE'S BONITA, INC.; SOAPY JOE'S ESCONDIDO, INC.; SOAPY JOE'S SORRENTO VALLEY, INC.; SOAPY JOE'S IMPERIAL BEACH, INC.; SOAPY JOE'S SAN YSIDRO, INC.; SOAPY JOE'S LA MESA, INC.; SWEETWATER CAR WASH, LLC; SOAPY JOE'S OCEANSIDE, INC.; SOAPY JOE'S RANCHO SAN DIEGO, INC.;

Case No.: 37-2022-00013622-CU-OE-CTL

**STIPULATION OF SETTLEMENT OF
PAGA ACTION AND RELEASE OF
PAGA CLAIMS**

Complaint Filed: April 12, 2022

1 SOAPY JOE'S CONVOY, INC.; SOAPY
2 JOE'S CUYAMACA STREET INC.; SOAPY
3 JOE'S EC1, INC.; SOAPY JOE'S ECB, INC.;
4 SOAPY JOE'S FALLBROOK, INC.; SOAPY
5 JOE'S HACIENDA DRIVE, INC.; SOAPY
6 JOE'S IMPERIAL BEACH, LLC; SOAPY
7 JOE'S MAIN STREET, INC.; SOAPY JOE'S
8 MIRAMAR INC.; SOAPY JOE'S MISSION
9 GORGE ROAD INC.; SOAPY JOE'S
10 MISSION GORGE, INC.; SOAPY JOE'S
11 MISSION VALLEY, INC.; SOAPY JOE'S
12 OPCO HOLDINGS, INC.; SOAPY JOE'S
13 PASEO DEL NORTE, INC.; SOAPY JOE'S
14 PH, INC.; SOAPY JOE'S SABRE SPRINGS,
15 INC.; SOAPY JOE'S SAN JACINTO INC.;
16 SOAPY JOE'S SAN YSIDRO, LLC; SOAPY
17 JOE'S SKYLINE, INC.; SOAPY JOE'S SYB,
18 INC.; SOAPY JOE'S UNIVERSITY
19 AVENUE INC.; SOAPY JOE'S WEST VISTA
20 WAY, INC.; SOAPY JOE'S INC.; SOAPY
21 JOE'S IMPERIAL BEACH, INC.; LORENS
22 ATTISHA, an individual; TALAL SHEENA,
23 an individual; and DOES 1-50,
24 Inclusive,
25
26 Defendants.

27
28
FERRARO VEGA EMPLOYMENT LAWYERS, INC.

Nicholas J. Ferraro, Esq.
3333 Camino Del Rio S, Suite 300
San Diego, CA 92108
(619) 693-7727
nick@ferrarovega.com

Attorneys for Plaintiffs

JAILENE MARTINEZ, RUBEN AGUSTIN,
AYDEN NAUNGAYAN-SLABY, and ZOLY MOUA

(Additional counsel on next page)

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1 Kim L. Carter, Bar No. 283212
kicarter@littler.com
2 Stephanie A. Kierig, Bar No. 312294
skierig@littler.com
3 LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
4 San Diego, California 92101.3577
Telephone: 619.232.0441
5 Fax No.: 619.232.4302

6 Attorneys for Defendants
7 SOAPY JOE'S GROUP, INC., a California
corporation; BHCW, INC. dba SOAPY JOE'S CAR
8 WASH; SOAPY JOE'S SAN MARCOS, INC.;
SOAPY JOE'S BONITA, INC.; SOAPY JOE'S
9 ESCONDIDO, INC.; SOAPY JOE'S SORRENTO
VALLEY, INC.; SOAPY JOE'S IMPERIAL
10 BEACH, INC.; SOAPY JOE'S SAN YSIDRO,
INC.; SOAPY JOE'S LA MESA, INC.;
11 SWEETWATER CAR WASH, LLC; SOAPY
JOE'S OCEANSIDE, INC.; SOAPY JOE'S
12 RANCHO SAN DIEGO, INC.; SOAPY JOE'S
CONVOY, INC.; SOAPY JOE'S CUYAMACA
13 STREET INC.; SOAPY JOE'S EC1, INC.; SOAPY
JOE'S ECB, INC.; SOAPY JOE'S FALLBROOK,
14 INC.; SOAPY JOE'S HACIENDA DRIVE, INC.;
SOAPY JOE'S IMPERIAL BEACH, LLC; SOAPY
15 JOE'S MAIN STREET, INC.; SOAPY JOE'S
MIRAMAR INC.; SOAPY JOE'S MISSION
16 GORGE ROAD INC.; SOAPY JOE'S MISSION
GORGE, INC.; SOAPY JOE'S MISSION
17 VALLEY, INC.; SOAPY JOE'S OPCO
HOLDINGS, INC.; SOAPY JOE'S PASEO DEL
18 NORTE, INC.; SOAPY JOE'S PH, INC.; SOAPY
JOE'S SABRE SPRINGS, INC.; SOAPY JOE'S
19 SAN JACINTO INC.; SOAPY JOE'S SAN
YSIDRO, LLC; SOAPY JOE'S SKYLINE, INC.;
20 SOAPY JOE'S SYB, INC.; SOAPY JOE'S
UNIVERSITY AVENUE INC.; SOAPY JOE'S
21 WEST VISTA WAY, INC.; SOAPY JOE'S INC.;
SOAPY JOE'S IMPERIAL BEACH, INC.;
22 LORENS ATTISHA; and TALAL SHEENA
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This Stipulation of Settlement of PAGA Action and Release of Claims is entered into by and between Plaintiffs JAILENE MARTINEZ (“Plaintiff Martinez”), RUBEN AGUSTIN (“Plaintiff Agustin”), AYDEN NAUNGAYAN-SLABY (“Plaintiff Naungayan-Slaby”), ZOLY MOUA (“Plaintiff Moua”), MAKIYA EPPS (“Plaintiff Epps”), and TESSIE HALEY (“Plaintiff Haley”) (collectively hereinafter “Plaintiffs”), individuals, in their representative capacities on behalf of the State of California and the Aggrieved Employees (as defined below), and Defendants SOAPY JOE’S GROUP, INC., BHCW, INC. dba SOAPY JOE’S CAR WASH, SOAPY JOE’S SAN MARCOS, INC., SOAPY JOE’S BONITA, INC., SOAPY JOE’S ESCONDIDO, INC., SOAPY JOE’S SORRENTO VALLEY, INC., SOAPY JOE’S IMPERIAL BEACH, INC., SOAPY JOE’S SAN YSIDRO, INC., SOAPY JOE’S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE’S OCEANSIDE, INC., SOAPY JOE’S RANCHO SAN DIEGO, INC., SOAPY JOE’S CONVOY, INC., SOAPY JOE’S CUYAMACA STREET INC., SOAPY JOE’S EC1, INC., SOAPY JOE’S ECB, INC., SOAPY JOE’S FALLBROOK, INC., SOAPY JOE’S HACIENDA DRIVE, INC., SOAPY JOE’S IMPERIAL BEACH, LLC, SOAPY JOE’S MAIN STREET, INC., SOAPY JOE’S MIRAMAR INC., SOAPY JOE’S MISSION GORGE ROAD INC., SOAPY JOE’S MISSION GORGE, INC., SOAPY JOE’S MISSION VALLEY, INC., SOAPY JOE’S OPCO HOLDINGS, INC., SOAPY JOE’S PASEO DEL NORTE, INC., SOAPY JOE’S PH, INC., SOAPY JOE’S SABRE SPRINGS, INC., SOAPY JOE’S SAN JACINTO INC., SOAPY JOE’S SAN YSIDRO, LLC, SOAPY JOE’S SKYLINE, INC., SOAPY JOE’S SYB, INC., SOAPY JOE’S UNIVERSITY AVENUE INC., SOAPY JOE’S WEST VISTA WAY, INC., SOAPY JOE’S INC., SOAPY JOE’S IMPERIAL BEACH, INC., LORENS ATTISHA, and TALAL SHEENA (“Defendants”):

I. DEFINITIONS

A. “Actions” means the representative action lawsuit designated *Makiya Epps and Tessie Haley v. Soapy Joe’s Group, Inc., et al.*, San Diego County Superior Court Case No. 37-2022-00013622-CU-OE-CTL, filed on April 12, 2022 (the “*Epps and Haley* Action” or the “PAGA Action”); the arbitration designated *Makiya Epps v. Soapy Joe’s Group, Inc.*, American Arbitration Association Case No. 01-23-0003-1833,

1 filed on July 18, 2023; the arbitration designated *Tessie Haley v. Soapy Joe's Group,*
2 *Inc.*, American Arbitration Association Case No. 01-23-0003-1834, filed on July 18,
3 2023; and the representative action lawsuit designated *Jailene Martinez, Ruben*
4 *Agustin, Ayden Naungayan-Slaby, and Zoly Moua v. Soapy Joe's Group, Inc., et al.*,
5 San Diego County Superior Court Case No. 37-2023-00053126-CU-OE-CTL, filed
6 on December 7, 2023 (the "*Martinez Action*").

7 B. "Aggrieved Employees" means all current and former non-exempt employees who
8 worked for Defendants in California during the PAGA Period.

9 C. "Aggrieved Employee Data" means the information produced by Defendants to the
10 Settlement Administrator on or before March 31, 2025, in Microsoft Excel, that
11 contains each Aggrieved Employee's full name; last known address; Social Security
12 Number; start dates and end dates of employment; and any other information the
13 Settlement Administrator deems necessary to accurately calculate the number of Pay
14 Periods worked by each Aggrieved Employee during the PAGA Period.

15 D. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of
16 PAGA Action and Release of Claims.

17 E. "Court" means the Superior Court for the State of California, County of San Diego
18 currently presiding over the PAGA Action.

19 F. "Defendants" means Soapy Joe's Group, Inc., BHCW, Inc. dba Soapy Joe's Car
20 Wash, Soapy Joe's San Marcos, Inc., Soapy Joe's Bonita, Inc., Soapy Joe's
21 Escondido, Inc., Soapy Joe's Sorrento Valley, Inc., Soapy Joe's Imperial Beach, Inc.,
22 Soapy Joe's San Ysidro, Inc., Soapy Joe's La Mesa, Inc., Sweetwater Car Wash, LLC,
23 Soapy Joe's Oceanside, Inc., Soapy Joe's Rancho San Diego, Inc., Soapy Joe's
24 Convoy, Inc., Soapy Joe's Cuyamaca Street, Inc., Soapy Joe's EC1, Inc., Soapy Joe's
25 ECB, Inc., Soapy Joe's Fallbrook, Inc., Soapy Joe's Hacienda Drive, Inc., Soapy Joe's
26 Imperial Beach, LLC, Soapy Joe's Main Street, Inc., Soapy Joe's Miramar, Inc.,
27 Soapy Joe's Mission Gorge Road, Inc., Soapy Joe's Mission Gorge, Inc., Soapy Joe's
28 Mission Valley, Inc., Soapy Joe's OPCO Holdings, Inc., Soapy Joe's Paseo Del

Norte, Inc., Soapy Joe's PH, Inc., Soapy Joe's Sabre Springs, Inc., Soapy Joe's San Jacinto, Inc., Soapy Joe's San Ysidro, LLC, Soapy Joe's Skyline, Inc., Soapy Joe's SYB, Inc., Soapy Joe's University Avenue, Inc., Soapy Joe's West Vista Way, Inc., Soapy Joe's, Inc., Soapy Joe's Imperial Beach, Inc., Lorens Attisha, and Talal Sheena.

G. "Effective Date" means the date the Court enters an order and judgment approving this Settlement.

H. "Funding Date" means the date by which Defendants have paid the entire Gross Settlement Amount to the Settlement Administrator in accord with the terms of this Agreement. Defendants shall pay the Gross Settlement Amount to the Settlement Administrator no later than thirty (30) calendar days after the Effective Date.

I. "Gross Settlement Amount" means Seven Hundred Sixty Thousand Dollars and Zero Cents (\$760,000.00) that Defendants must pay into the QSF in connection with this Settlement, inclusive of the sum of Settlement Administration Costs, PAGA Counsel Award, and PAGA Representative Service Awards, and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

J. "Net Settlement Amount" means the Gross Settlement Amount minus the PAGA Representative Service Awards, Settlement Administration Costs, PAGA Counsel Award, with 25% of the Net Settlement Amount going to the Aggrieved Employees ("Aggrieved Employee Payment") and 75% of the Net Settlement Amount going to the State of California Labor and Workforce Development Agency ("LWDA Payment"). The allocation of payment of claims among the Aggrieved Employees shall be paid based on the number of Pay Periods worked during the PAGA Period. Aggrieved Employees will be issued IRS Forms 1099 for the Aggrieved Employee Payments.

K. "Net Settlement Amount Distribution Formula" means the pro-rata distribution of the Net Settlement Amount described in Section III.I.1 below.

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- 1 L. "Notice of PAGA Settlement" means the notice to be provided to the Aggrieved
2 Employees by the Settlement Administrator in the form set forth as Exhibit A to this
3 Agreement.
- 4 M. "Operative Complaint" means the First Amended Complaint that will be submitted
5 for filing with the Court within ten (10) days of the Court granting leave to amend.
- 6 N. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
7 §§ 2698, *et seq.*
- 8 O. "PAGA Counsel" means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, Shani
9 O. Zakay, Esq. of Zakay Law Group, APLC, and Nicholas J. Ferraro of Ferraro Vega
10 Employment Lawyers, Inc.
- 11 P. "PAGA Counsel Award" means attorneys' fees not to exceed one-third (1/3) of the
12 Gross Settlement Amount (currently estimated to be Two Hundred Fifty-Three
13 Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
14 (\$253,333.33)) **and** costs and expenses supported by declaration not to exceed Thirty
15 Thousand Dollars and Zero Cents (\$30,000.00). To the extent that the Court approves
16 less than the PAGA Counsel Award that PAGA Counsel requests, the difference
17 between the requested and awarded amounts will be reallocated to the Gross
18 Settlement Amount. PAGA Counsel's award of attorneys' fees shall be divided
19 between PAGA Counsel as follows: one-third (1/3) to JCL Law Firm, APC, one-third
20 (1/3) to Zakay Law Group, APLC, and one-third (1/3) to Ferraro Vega Employment
21 Lawyers, Inc.
- 22 Q. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
23 Employee Payment, as defined herein, means any pay period during which an
24 Aggrieved Employee was employed by Defendants in California and received
25 compensation during the PAGA Period. Defendants' records will be presumed to be
26 correct unless any particular Aggrieved Employee proves otherwise to the Settlement
27 Administrator by credible written evidence. All Pay Period disputes will be resolved
28 and decided by the Settlement Administrator, and the Settlement Administrator's

1 decision on all Pay Period disputes will be final and non-appealable.

2 R. "PAGA Payment Ratio" means the respective Pay Periods worked during the PAGA
3 Period for each Aggrieved Employee divided by the sum total of the Pay Periods for
4 all Aggrieved Employees during the PAGA Period.

5 S. "PAGA Period" means the period of February 10, 2021, through December 31, 2024.

6 T. "PAGA Representative Service Awards" means awards in the amount of Five
7 Thousand Dollars and Zero Cents (\$5,000.00) or in an amount that the Court
8 authorizes to be paid to each Plaintiff, in addition to their pro rata portion of the
9 Aggrieved Employee Payment, for the work Plaintiffs have completed in representing
10 the Aggrieved Employees.

11 U. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean either
12 Plaintiffs or Defendants, individually.

13 V. "Plaintiffs" means Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-Slaby,
14 Plaintiff Moua, Plaintiff Epps, and Plaintiff Haley.

15 W. "Plaintiffs' Released Individual Claims" means Plaintiffs' separate settlement of their
16 individual claims, for which Defendants will pay each Plaintiff Fifteen Thousand
17 Dollars and Zero Cents (\$15,000.00) within thirty (30) days of the Effective Date of
18 this Agreement in addition to the Gross Settlement Amount, in exchange for a release
19 of any and all claims and potential claims that may legally be waived by private
20 agreement, whether known or unknown, which Plaintiffs have asserted or could assert
21 against Defendants, their officers, directors, or employees arising out of or relating in
22 any way to any acts, circumstances, facts, transactions, or omissions, subject to a
23 separate settlement agreement to be executed by Plaintiffs. The release will include,
24 but is not limited to, (i) any and all claims arising under Title VII of the Civil Rights
25 Acts of 1866, 1964, and 1991, the Age Discrimination in Employment Act of 1967
26 (ADEA), the Family Medical Leave Act (FMLA), the Employee Retirement Income
27 Security Act (ERISA), the National Labor Relations Act (NLRA), the Pregnancy
28 Discrimination Act, the Worker Adjustment and Retraining Notification (WARN)

1 Act, the Americans with Disabilities Act (ADA), the Uniformed Services
2 Employment and Reemployment Rights Act (USERRA), the California Fair
3 Employment and Housing Act (FEHA), the California Labor Code, including Labor
4 Code section 1102.5 and individual claims under PAGA and standing as an alleged
5 “aggrieved employee” under such statute, and any amendments to such laws, the
6 California Family Rights Act (CFRA), the Fair Credit Reporting Act (FCRA), any
7 other federal, state, or local constitution, charter, law, rule, ordinance, regulation, or
8 order; (ii) claims based on veteran status; (iii) claims in equity or under common law,
9 including, but not limited to, claims for tort, breach of contract (express or implied,
10 written or oral), wrongful discharge, defamation, emotional distress, negligence,
11 negligent hiring and retention, and claims for punitive or exemplary damages; (iv) all
12 claims under any federal, state, or local statute, including claims for employment
13 discrimination, harassment, retaliation, wrongful termination, constructive
14 termination, violation of public policy, wage and hour law violations, breach of any
15 express or implied contract, breach of any implied covenant, fraud, breach of
16 fiduciary duty, negligence, intentional or negligent misrepresentation, emotional
17 distress, interference with prospective economic advantage, interference with
18 contract, slander, invasion of privacy, any personal injury, promissory estoppel,
19 unjust enrichment, detrimental reliance, whistleblowing, failure to pay wages, and
20 tort, compensatory and/or punitive damages, claims for attorneys’ fees, any injunctive
21 relief, violation of any statute, or any other claims relating to their employment with
22 or termination of employment with Defendants; and (v) all claims made or which
23 could have been made before any administrative agency, including the California
24 Civil Rights Division, the California Department of Industrial Relations, the
25 California Division of Labor Standards Enforcement, the California Labor Workforce
26 Development Agency, the California Labor Commissioner, in the Superior Court of
27 the State of California for the County of San Diego, in any other Superior Court in
28 any county in California, in federal court, or in any other court of the land, against

Defendants and/or any of the Released Parties. Plaintiffs' Released Individual Claims shall not include the PAGA claims asserted in the *Epps and Haley* Action or the *Martinez* Action that are subject to this Agreement, or actions to enforce this Agreement, or claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time.

X. "QSF" means the Qualified Settlement Fund established, designated, and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

Y. "Released PAGA Claims" means the release from Plaintiffs, the Aggrieved Employees, and the State of California for all claims for civil penalties under PAGA that were actually alleged or that could have been alleged based on the facts, claims, or allegations in the Actions, the PAGA notices submitted by Plaintiffs to the LWDA (including any amendments thereto), and/or the Operative Complaint, including, but not limited to: (a) penalties pursuant to Labor Code sections 201-204, 206.5, 210, 226, 226.3, 226.7, 246-248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, *et seq.*, 2802, and 2804; (b) PAGA penalties for alleged violations of the applicable Industrial Wage Commission Wage Order(s); (c) claims for the attorneys' fees and costs incurred in the prosecution of the Actions on behalf of the Aggrieved Employees; (d) any other remedies under PAGA, penalties, or interest based in whole or in part on the facts, claims, or allegations in the Actions, the PAGA notices submitted by Plaintiffs to the LWDA (including any amendments thereto), and/or the Operative Complaint; and (e) all claims that Plaintiffs and/or any of the Aggrieved Employees may have against Defendants or any of the Released Parties relating to the payment, taxation, and/or allocation of attorneys' fees and costs to PAGA Counsel pursuant to this Agreement.

Z. "Released Parties" means Defendants and any of their past, present, and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates, divisions, and joint ventures, as well as each of their past, present, and future officers, directors, employees, partners, members, shareholders, agents, attorneys, insurers, reinsurers,

1 assigns, and any individual or entity that could be jointly liable with Defendants.

2 AA. "Settlement" means the disposition of the Actions pursuant to this Agreement.

3 BB. "Settlement Administrator" means Apex Class Action LLC, located at 18 Technology
4 Drive, Suite 154, Irvine, CA 92618; Tel: (800) 355-0700. The Settlement
5 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
6 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
7 of the Gross Settlement Amount is deposited for the purpose of resolving the claims
8 of Aggrieved Employees. The Settlement Administrator shall maintain the funds until
9 distribution in an account(s) segregated from the assets of Defendants and any person
10 related to Defendants. All accrued interest shall be paid and distributed to the
11 Aggrieved Employees as part of their respective Individual Settlement Payment.

12 CC. "Settlement Administration Costs" means the amount paid to the Settlement
13 Administrator from the Gross Settlement Amount for administering the Settlement
14 pursuant to this Agreement, currently estimated not to exceed Seven Thousand Nine
15 Hundred Ninety Dollars and Zero Cents (\$7,990.00).

16 **II. RECITALS**

17 A. On January 24, 2022, Plaintiff Epps and Plaintiff Haley filed a Notice of Violations
18 with the Labor and Workforce Development Agency ("LWDA") and served the same
19 on Defendants.

20 B. On April 12, 2022, Plaintiff Epps and Plaintiff Haley filed a Representative Action
21 Complaint alleging a single cause of action for PAGA violations.

22 C. On September 22, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-
23 Slaby, and Plaintiff Moua filed a Notice of Violations with the LWDA and served the
24 same on Defendants.

25 D. On December 7, 2023, Plaintiff Martinez, Plaintiff Agustin, Plaintiff Naungayan-
26 Slaby, and Plaintiff Moua filed a Representative Action Complaint alleging a single
27 cause of action for PAGA violations.

28 ///

- 1 E. On December 27, 2022, Defendants filed a Motion to Compel Arbitration in the *Epps*
2 *and Haley* Action.
- 3 F. On July 18, 2023, Plaintiff Epps filed an Arbitration Demand with the American
4 Arbitration Association.
- 5 G. On July 18, 2023, Plaintiff Haley filed an Arbitration Demand with the American
6 Arbitration Association.
- 7 H. On March 4, 2024, Plaintiff Epps and Plaintiff Haley filed an Amended Notice of
8 Violations with the LWDA to add an additional allegation under California Code of
9 Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) and served the
10 same on Defendants.
- 11 I. On November 4, 2024, the Parties attended a global mediation presided over by Gig
12 Kyriacou, Esq., an experienced mediator of wage and hour representative actions.
13 The mediation concluded with a settlement, which was subsequently memorialized in
14 the form of a Memorandum of Understanding.
- 15 J. On February 14, 2025, the Parties filed a Stipulation and [Proposed] Order for Leave
16 to File First Amended Representative Action Complaint. Within ten (10) days of the
17 Court granting leave to amend, Plaintiffs will file the Operative Complaint to
18 consolidate all PAGA claims pled in the *Martinez* Action into the *Epps and Haley*
19 Action.
- 20 K. Upon the Court's filing of the Operative Complaint, the Parties will file a joint motion
21 requesting to dismiss, without prejudice, the *Martinez* Action. The Parties agree that
22 although dismissal of the *Martinez* Action will be requested without prejudice, all
23 claims asserted in the *Martinez* Action will be released upon the Court's approval of
24 this Settlement and the fulfillment of its terms.
- 25 L. This Agreement replaces and supersedes the Memorandum of Understanding and any
26 other agreements, understandings, or representations between the Parties. This
27 Agreement represents a compromise and settlement of highly disputed claims.
28 Nothing in this Agreement is intended to or will be construed as an admission by

Defendants that the claims in the Actions have merit or that Defendants bear any liability to Plaintiffs or the Aggrieved Employees on the claims asserted in the Actions or any other claims, or as an admission by Plaintiffs that Defendants' defenses in the Actions have merit.

M. The Parties believe that the Settlement is fair, reasonable, and adequate. The Settlement was achieved through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Actions through trial and any appeal. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the Actions fully, finally, and forever.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendants will pay the Gross Settlement Amount of Seven Hundred Sixty Thousand Dollars and Zero Cents (\$760,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants other than the Defendants' share of employer payroll taxes and as provided in Section III.A.4 below.

2. Pay Period Determinations. At the mediation of the Actions, Defendants represented that the Aggrieved Employees worked approximately 38,000 Pay Periods during the PAGA Period. If the actual number of Pay Periods worked by the Aggrieved Employees during the PAGA Period exceeds the estimated 38,000 Pay Periods by more than 10%, the Gross Settlement Amount will increase proportionally for the number of workweeks over 110% of 38,000 (41,800).

///

- 1 3. Settlement Payment. Defendants shall deposit the Gross Settlement Amount
2 into the QSF, through the Settlement Administrator on or before the Funding
3 Date.
- 4 4. Defendants' Share of Payroll Taxes. Defendants' share of employer-side
5 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
6 together with the Gross Settlement Amount on the Funding Date.
- 7 5. Release by the Aggrieved Employees. Following the Court's approval of the
8 Settlement and upon Defendants' funding of the Gross Settlement Amount,
9 Defendants shall be entitled to a release from Plaintiffs, the Aggrieved
10 Employees, and the State of California from the Released PAGA Claims for
11 the PAGA Period.
- 12 B. No Right of Aggrieved Employees to Object or Opt Out of Settlement. The Parties
13 agree there is no statutory right for any Aggrieved Employees to object, opt out, or
14 otherwise exclude themselves from the Settlement. Except as otherwise stated, the
15 Parties will jointly and vigorously defend against any attempts by any Aggrieved
16 Employees or by any entity or agency to intervene in this matter or object to or opt out
17 of this Settlement. The Parties further agree there is no right or opportunity for any
18 Aggrieved Employee to appeal the approval of the Settlement by the Court. The
19 Parties will jointly and vigorously defend against any appeal filed with respect to the
20 Court's final order approving this Settlement.
- 21 C. Conditions Precedent. This Settlement will become final and effective only upon (1)
22 the Court entering judgment pursuant to either the Parties' Motion for Settlement
23 Approval or Joint Stipulation re: Settlement Approval, and (2) Defendants fully
24 funding the Gross Settlement Amount.
- 25 D. Nullification of Settlement Agreement. If the Court does not approve this Settlement
26 Agreement, or if the Agreement fails to become effective, is reversed, withdrawn, or
27 modified by the Court, or if the Court in any way prevents or prohibits Defendants
28 from obtaining a complete resolution of the Released PAGA Claims, or if Defendants

fail to fully fund the Gross Settlement Amount:

1. This Settlement Agreement shall be void *ab initio* and be of no force or effect, and shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses, or arguments in the Actions.

E. In the event that all other conditions of the Settlement are met, and all Court approvals are obtained, and Defendants fail to fund the Gross Settlement Amount, Defendants shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Aggrieved Employees and all Settlement Administration Costs incurred to the date of nullification.

F. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for in this Agreement, and the Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. The Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on their respective share of the Aggrieved Employee Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of the Aggrieved Employee Payments.

G. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,

her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

H. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing, and mailing payments to the Aggrieved Employees, PAGA Counsel, and the LWDA; printing and mailing the Notice of PAGA Settlement to the Aggrieved Employees as directed by the Court; calculating and distributing tax forms for the Aggrieved Employee Payments; distributing the LWDA Payment to the LWDA; providing declaration(s) as necessary in support of approval of this Settlement; resolving any disputes related to PAGA Pay Period allocations; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

I. Funding and Allocation of the Gross Settlement Amount. Defendants shall pay the Gross Settlement Amount to the Settlement Administrator on or before the Funding Date.

1. Calculation of Individual Payments to the Aggrieved Employees. Using the Aggrieved Employee Data, the Settlement Administrator shall add up the total number of Pay Periods for all Aggrieved Employees during the PAGA Period. The respective Pay Periods for each Aggrieved Employee will be divided by

1 the total Pay Periods for all Aggrieved Employees, resulting in the “PAGA
2 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s
3 PAGA Payment Ratio will then be multiplied by the Aggrieved Employee
4 Payment to calculate each Aggrieved Employee’s estimated share of the
5 Aggrieved Employee Payment.

6 2. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
7 Employee Payments shall be allocated and treated as 100% penalties and shall
8 be reported on IRS Forms 1099 to the Aggrieved Employees.

9 3. No Credit Toward Benefit Plans. The individual Aggrieved Employee
10 Payments made to Aggrieved Employees under this Settlement Agreement, as
11 well as any other payments made pursuant to this Settlement Agreement, will
12 not be utilized to calculate any additional benefits under any benefit plans to
13 which any Aggrieved Employees may be eligible, including, but not limited
14 to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
15 vacation plans, sick leave plans, PTO plans, and any other benefit plan.
16 Rather, it is the Parties’ intention that this Settlement Agreement will not
17 affect any rights, contributions, or amounts to which any Aggrieved
18 Employees may be entitled under any benefit plans.

19 4. Mailing. Aggrieved Employee Payments shall be mailed by regular First-
20 Class U.S. Mail to each Aggrieved Employee’s last known mailing address
21 no later than five (5) business days after the Funding Date together with the
22 Notice of PAGA Settlement.

23 5. Undeliverable Aggrieved Employee Payments. Any individual Aggrieved
24 Employee Payments returned to the Settlement Administrator as non-
25 delivered on or before the check cashing expiration deadline shall be re-mailed
26 to any forwarding address provided within seven (7) calendar days of
27 receiving the returned notice. If no forwarding address is provided, the
28 Settlement Administrator shall promptly attempt to determine a correct

1 address by lawful use of skip-tracing or other search using the name, last
2 known address, and/or Social Security number of the Aggrieved Employee
3 involved, and shall then perform a re-mailing if the Settlement Administrator
4 identifies another mailing address. In addition, if any Aggrieved Employee
5 Payment, which is addressed to any Aggrieved Employee who is currently
6 employed by Defendants, is returned to the Settlement Administrator as non-
7 delivered and no forwarding address is provided, the Settlement Administrator
8 shall notify Defendants. Defendants will request that the currently employed
9 Aggrieved Employee provide a corrected address and transmit to the
10 Settlement Administrator any corrected address provided by the Aggrieved
11 Employee. Aggrieved Employees who received a re-mailed Aggrieved
12 Employee Payment shall have their check expiration deadline extended fifteen
13 (15) calendar days from the original check expiration deadline.

14 6. Expiration. Any checks issued to Aggrieved Employees shall remain valid
15 and negotiable for one hundred eighty (180) days from the date of their
16 issuance. If an Aggrieved Employee does not cash his or her settlement check
17 within ninety (90) days, the Settlement Administrator will send a letter to the
18 Aggrieved Employee advising that the check will expire after the 180th day
19 and invite that Aggrieved Employee to request reissuance in the event the
20 check was destroyed, lost, or misplaced. In the event an Aggrieved
21 Employee's check has not been cashed within one hundred eighty (180) days,
22 all funds represented by such uncashed checks, plus any interest accrued
23 thereon, shall be paid to the Legal Aid Society of San Diego, a Cy Pres,
24 pursuant to California Code of Civil Procedure section 384.

25 7. PAGA Representative Service Awards. In addition to their individual shares
26 of the Aggrieved Employee Payment, Plaintiffs will apply to the Court for
27 awards of not more than Five Thousand Dollars and Zero Cents (\$5,000.00)
28 to each Plaintiff as the PAGA Representative Service Awards. Defendants

1 will not oppose the PAGA Representative Service Awards of not more than
2 Five Thousand Dollars and Zero Cents (\$5,000.00) to each Plaintiff. The
3 Settlement Administrator shall pay the PAGA Representative Service
4 Awards, either in the amount stated herein if approved by the Court or some
5 other amount as approved by the Court, to Plaintiffs from the Gross Settlement
6 Amount no later than five (5) business days after the Funding Date. Any
7 portion of the requested PAGA Representative Service Awards that are not
8 awarded to Plaintiffs shall be part of the Net Settlement Amount and shall be
9 distributed to Aggrieved Employees as provided in this Agreement. The
10 Settlement Administrator shall issue IRS Forms 1099 — MISC to Plaintiffs
11 for their PAGA Representative Service Awards. Plaintiffs shall be solely and
12 legally responsible to pay any and all applicable taxes on their PAGA
13 Representative Service Awards and shall hold harmless the Released Parties
14 from any claim or liability for taxes, penalties, or interest arising as a result of
15 the PAGA Representative Service Awards. Approval of this Settlement shall
16 not be conditioned on Court approval of the requested amount of the PAGA
17 Representative Service Awards. If the Court reduces or does not approve the
18 requested PAGA Representative Service Awards, Plaintiffs shall not have the
19 right to revoke the Settlement, and it will remain binding.

- 20 8. PAGA Counsel Award. Defendants do not oppose a request by PAGA
21 Counsel for attorneys' fees not to exceed one-third (1/3) of the Gross
22 Settlement currently estimated to be Two Hundred Fifty-Three Thousand
23 Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$253,333.33)
24 *and* costs and expenses supported by declaration not to exceed Thirty
25 Thousand Dollars and Zero Cents (\$30,000.00). Any awarded PAGA Counsel
26 Award shall be paid from the Gross Settlement Amount. Any portion of the
27 requested PAGA Counsel Award that is not awarded to PAGA Counsel shall
28 be part of the Net Settlement Amount and shall be distributed to the Aggrieved

1 Employees as provided in this Agreement. Defendants agree to not oppose
2 PAGA Counsel's reasonable attorneys' expenses in an amount as documented
3 in PAGA Counsel's billing statements to be paid from the Gross Settlement
4 Amount. The Settlement Administrator shall allocate and pay the PAGA
5 Counsel Award to PAGA Counsel from the Gross Settlement Amount no later
6 than five (5) business days after the Funding Date. PAGA Counsel shall be
7 solely and legally responsible to pay all applicable taxes on the payment made
8 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
9 Form 1099 — MISC to PAGA Counsel for the payments made pursuant to
10 this paragraph. In the event that the Court reduces or does not approve the
11 requested PAGA Counsel Award, Plaintiffs and PAGA Counsel shall not have
12 the right to revoke the Settlement, or to appeal such order, and the Settlement
13 will remain binding.

14 9. LWDA Payment. The Settlement Administrator shall transmit the LWDA
15 Payment to the LWDA as one lump sum payment, if by check, certified mail
16 return receipt requested to PAGA Counsel, within five (5) business days of
17 the Gross Settlement Amount being funded in full.

18 10. Settlement Administration Costs. The Settlement Administrator shall be paid
19 for the costs of administration of the Settlement from the Gross Settlement
20 Amount. The estimate of the Settlement Administration Costs is Seven
21 Thousand Nine Hundred Ninety Dollars and Zero Cents (\$7,990.00). The
22 Settlement Administrator shall be paid the Settlement Administration
23 Expenses no later than five (5) business days after the Effective Date.

24 J. Approval Motion. PAGA Counsel and Plaintiffs shall use their best efforts to file with
25 the Court a Motion for Settlement Approval and [Proposed] Order Granting Approval
26 of PAGA Settlement within seventy-five (75) days following the execution of this
27 Agreement.

28 ///

- 1 K. Review of Motion for Settlement Approval. PAGA Counsel will provide an
2 opportunity for Defendants' counsel to review the Motion for Settlement Approval,
3 including the [Proposed] Order Granting Approval of PAGA Settlement and Judgment
4 three (3) business days before filing with the Court. The Parties and their counsel will
5 cooperate with each other and use their best efforts to effect the Court's approval of
6 the Motion for Approval of the Settlement and entry of Judgment.
- 7 L. Cooperation. The Parties and their counsel will cooperate with each other and use
8 their best efforts to implement the terms of this Settlement.
- 9 M. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
10 except such proceedings necessary to implement and complete the Settlement, pending
11 the Court's hearing on the Motion for Approval of the Settlement.
- 12 N. Amendment or Modification. This Agreement may be amended or modified only by
13 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 14 O. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
15 represent they are expressly authorized by the Parties whom they represent to negotiate
16 this Agreement and to take all appropriate action required or permitted to be taken by
17 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
18 documents required to effectuate the terms of this Agreement. The person signing this
19 Agreement on behalf of Defendants represents and warrants that they are authorized
20 to sign this Agreement on behalf of Defendants. Plaintiffs represent and warrant that
21 they are authorized to sign this Agreement and that they have not assigned any claim,
22 or part of a claim, covered by this Settlement to a third-party.
- 23 P. No Public Comment. The Parties and their counsel agree that they will not issue any
24 press releases, initiate any contact with the press, respond to any press inquiry, or have
25 any communication with the press about the fact, amount, or terms of the Settlement
26 Agreement. PAGA Counsel further agrees not to use the Settlement Agreement or any
27 of its terms for any marketing or promotional purposes. Nothing herein will restrict
28 PAGA Counsel from including publicly available information regarding this

1 Settlement in future judicial submissions regarding PAGA Counsel's qualifications
2 and experience. This will not prevent PAGA Counsel from undertaking the requisite
3 submissions and disclosures to obtain approval of this Agreement. Further, PAGA
4 Counsel will not include, reference, or use the Settlement Agreement for any
5 marketing or promotional purposes, either before or after the Motion for Settlement
6 Approval is filed.

7 Q. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
8 to the benefit of, the successors or assigns of the Parties, as previously defined.

9 R. California Law Governs. All terms of this Agreement and the Exhibit, and any
10 disputes concerning this Agreement, shall be governed by and interpreted according
11 to the laws of the State of California.

12 S. Disputes. Any dispute between the Parties as to the remaining terms of this Agreement
13 shall be presented to the mediator, Gig Kyriacou, Esq., for resolution.

14 T. Counterparts. This Agreement may be executed in one or more counterparts. All
15 executed counterparts and each of them shall be deemed to be one and the same
16 instrument, provided that counsel for the Parties to this Agreement shall exchange
17 among themselves copies or originals of the signed counterparts.

18 U. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this Settlement
19 is a fair, adequate, and reasonable settlement of the Actions and have arrived at this
20 Settlement after extensive arm's-length negotiations, taking into account all relevant
21 factors, present and potential.

22 V. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
23 664.6, the Parties agree that the Court shall retain jurisdiction with respect to the
24 interpretation, implementation, and enforcement of the terms of this Agreement and
25 all orders and judgments entered in connection therewith, and the Parties and their
26 counsel submit to the jurisdiction of the Court for purposes of interpreting,
27 implementing, and enforcing the Settlement and all orders and judgments entered in
28 connection with this Agreement.

1 W. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5 X. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
6 Released PAGA Claims have merit and give rise to liability on the part of Defendants.
7 Defendants have claimed and continue to claim that the Released PAGA Claims have
8 no merit and do not give rise to liability. This Agreement is a compromise of disputed
9 claims. Nothing contained in this Agreement and no documents referred to and no
10 action taken to carry out this Agreement may be construed or used as an admission by
11 or against Defendants, Plaintiffs, PAGA Counsel, or Defendants' counsel as to the
12 merits or lack thereof of the claims asserted. Other than as may be specifically set
13 forth herein, each Party shall be responsible for and shall bear its/his/her own
14 attorney's fees and costs.

15 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

16 DATED: _____

17 _____
JAILENE MARTINEZ

18 DATED: _____

19 _____
RUBEN AGUSTIN

20 DATED: _____

21 _____
AYDEN NAUNGAYAN-SLABY

22 DATED: _____

23 _____
ZOLY MOUA

24 DATED: _____

25 _____
MAKIYA EPPS

26 DATED: 03/21/2025

27 
Tessie Haley (Mar 21, 2025 13:39 CDT)
28 _____
TESSIE HALEY

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

2
3 DATED: _____

4 DEFENDANTS SOAPY JOE'S GROUP, INC.,
5 BHCW, INC. dba SOAPY JOE'S CAR WASH, SOAPY JOE'S SAN MARCOS , INC., SOAPY
6 JOE'S BONITA, INC., SOAPY JOE'S ESCONDIDO, INC., SOAPY JOE'S SORRENTO
7 VALLEY, INC., SOAPY JOE'S IMPERIAL BEACH, INC., SOAPY JOE'S SAN YSIDRO, INC.,
8 SOAPY JOE'S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE'S
9 OCEANSIDE, INC., SOAPY JOE'S RANCHO SAN DIEGO, INC., SOAPY JOE'S CONVOY,
10 INC., SOAPY JOE'S CUYAMACA STREET INC., SOAPY JOE'S EC1, INC., SOAPY JOE'S
11 ECB, INC., SOAPY JOE'S FALLBROOK, INC., SOAPY JOE'S HACIENDA DRIVE, INC.,
12 SOAPY JOE'S IMPERIAL BEACH, LLC, SOAPY JOE'S MAIN STREET, INC., SOAPY JOE'S
13 MIRAMAR INC., SOAPY JOE'S MISSION GORGE ROAD INC., SOAPY JOE'S MISSION
GORGE, INC., SOAPY JOE'S MISSION VALLEY, INC., SOAPY JOE'S OPCO HOLDINGS,
INC., SOAPY JOE'S PASEO DEL NORTE, INC., SOAPY JOE'S PH, INC., SOAPY JOE'S
SABRE SPRINGS, INC., SOAPY JOE'S SAN JACINTO INC., SOAPY JOE'S SAN YSIDRO,
LLC, SOAPY JOE'S SKYLINE, INC., SOAPY JOE'S SYB, INC., SOAPY JOE'S UNIVERSITY
AVENUE INC., SOAPY JOE'S WEST VISTA WAY, INC., SOAPY JOE'S INC., SOAPY JOE'S
IMPERIAL BEACH, INC., LORENS ATTISHA, and TALAL SHEENA

14
15 _____
Printed Name

16
17 _____
Title

18
19 IT IS SO AGREED AS TO FORM BY COUNSEL:

20
21 DATED: March 26, 2025

JCL LAW FIRM, A.P.C.

22 By:  _____

23 Attorneys for Plaintiff and the Aggrieved Employees

24
25
26 DATED: March 26, 2025

ZAKAY LAW GROUP, APLC

27 By:  _____

28 Attorneys for Plaintiffs and the Aggrieved Employees

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DATED: _____

FERRARO VEGA EMPLOYMENT LAWYERS, INC.

By: _____

Attorneys for Plaintiffs and the Aggrieved Employees

DATED: _____

LITTLER MENDELSON, P.C.

By: _____

Kim L. Carter

Stephanie A. Kierig

Attorneys for Defendants

EXHIBIT A

[Administrator Notice]

You are receiving this payment because of a lawsuit brought by a former California employees against Soapy Joe's Group, Inc., BHCW, Inc. dba Soapy Joe's Car Wash, Soapy Joe's San Marcos, Inc., Soapy Joe's Bonita, Inc., Soapy Joe's Escondido, Inc., Soapy Joe's Sorrento Valley, Inc., Soapy Joe's Imperial Beach, Inc., Soapy Joe's San Ysidro, Inc., Soapy Joe's La Mesa, Inc., Sweetwater Car Wash, LLC, Soapy Joe's Oceanside, Inc., Soapy Joe's Rancho San Diego, Inc., Soapy Joe's Convoy, Inc., Soapy Joe's Cuyamaca Street, Inc., Soapy Joe's EC1, Inc., Soapy Joe's ECB, Inc., Soapy Joe's Fallbrook, Inc., Soapy Joe's Hacienda Drive, Inc., Soapy Joe's Imperial Beach, LLC, Soapy Joe's Main Street, Inc., Soapy Joe's Miramar, Inc., Soapy Joe's Mission Gorge Road, Inc., Soapy Joe's Mission Gorge, Inc., Soapy Joe's Mission Valley, Inc., Soapy Joe's OPCO Holdings, Inc., Soapy Joe's Paseo Del Norte, Inc., Soapy Joe's PH, Inc., Soapy Joe's Sabre Springs, Inc., Soapy Joe's San Jacinto, Inc., Soapy Joe's San Ysidro, LLC, Soapy Joe's Skyline, Inc., Soapy Joe's SYB, Inc., Soapy Joe's University Avenue, Inc., Soapy Joe's West Vista Way, Inc., Soapy Joe's, Inc., Soapy Joe's Imperial Beach, Inc., Lorens Attisha, and Talal Sheena ("Defendants") for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* ("PAGA"). Plaintiffs Jailene Martinez, Ruben Agustin, Ayden Naungayan-Slaby, Zoly Moua, Makiya Epps, and Tessie Haley ("Plaintiffs") claimed that they, and other employees, were not provided legally compliant meal and rest periods, not paid for all time worked, including minimum, regular, and overtime wages, not properly paid overtime, sick pay, and premium wages at the correct regular rate of pay, not reimbursed for business expenses, not paid sick time, not provided with accurate wage statements, not timely paid final wages, and that Defendants did not maintain accurate payroll records.

Defendants deny these claims and deny that they owe any penalties, but to avoid further time and expense in litigation, Defendants and Plaintiffs have agreed to settle the case. The settlement resolves the claims asserted in the lawsuit on behalf of all current and former non-exempt employees who worked for Defendants in California between February 10, 2021, and December 31, 2024 ("Aggrieved Employees").

According to Defendants' records, you are an Aggrieved Employee and are therefore entitled to a share of the settlement. This settlement check shall remain valid until [insert date].

This check is issued pursuant to the terms of the Stipulation of Settlement of PAGA Action and Release of Claims, for which the Court issued an Order and Judgment in San Diego County Superior Court Case No. 37-2022-00013622-CU-OE-CTL. The PAGA settlement settles and releases only claims for PAGA penalties and no other claims against Defendants.

This payment is taxable income for federal, state, and local tax purposes and may be reported to the appropriate taxing authorities. You may be required to make additional tax payments. Please consult a tax advisor to determine your individual tax payment and reporting situation. You will be mailed appropriate tax forms no later than [insert date]. Please notify us of any address changes so that any necessary tax forms can be mailed to your current address.

If you have any questions about your award, please contact the Settlement Administrator, Apex Class Action, LLC, located at 18 Technology Drive, Suite 154, Irvine, CA 92618.

EXHIBIT 2



5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

January 24, 2022

Labor & Workforce Development Agency

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Via Online Submission

**B H C W, INC.,
DBA SOAPY JOE'S CAR WASH**
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOES BONITA, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S SORRENTO VALLEY, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S SAN YSIDRO, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SWEETWATER CAR WASH, LLC
c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

**SOAPY JOE'S SAN MARCOS, INC.
(DBA SOAPY JOE'S CAR WASH)**
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S ESCONDIDO, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S IMPERIAL BEACH, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S OCEANSIDE, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S GROUP, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

Via Certified Mail No. 7021 2720 0000 9972 5924

LORENS ATTISHA
The Plate Law Firm
1999 Sweetwater Road
National City, CA 91950

Via Certified Mail No. 7021 2720 0000 9972 5498

SOAPY JOE'S RANCHO SAN DIEGO, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

SOAPY JOE'S LA MESA, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

TALAL SHEENA

11465 Woodside Drive,
Santee, CA 92071

Via Certified Mail No. 7021 2720 0000 9972 5481

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents MAKIYA EPPS (Client "Epps") and TESSIE HALEY (Client "Haley") (collectively "Clients") and other aggrieved employees in a representative action against SOAPY JOE'S GROUP, INC. dba SOAPY JOE'S CAR WASH, BHCW, INC. dba SOAPY JOE'S CAR WASH, SOAPY JOE'S SAN MARCOS, INC., SOAPY JOE'S BONITA, INC., SOAPY JOE'S ESCONDIDO, INC., SOAPY JOE'S SORRENTO VALLEY, INC., SOAPY JOE'S IMPERIAL BEACH, INC., SOAPY JOE'S SAN YSIDRO, INC., SOAPY JOE'S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE'S OCEANSIDE, INC., SOAPY JOE'S RANCHO SAN DIEGO, INC., LORENS ATTISHA, TALAL SHEENA (collectively "Defendants"). This office intends to file the enclosed Representative Action Complaint on behalf of Clients 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.

Client Epps was employed by Defendants in California from July 2018 to March 2021. Client Haley was employed by Defendants in California from June 2020 to March 2021. Clients were paid on an hourly basis and entitled incentive compensation and to legally required meal and rest periods. The aggrieved employees intended to be covered by this correspondence include all of Defendants' employees, including all non-exempt and exempt employees. At all times during Clients' employment, Defendants failed to, among other things, provide Clients, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay. Defendants also failed to provide Clients with accurate and complete wage statements reflecting, among other things, the number of hours worked and the rate of pay.

As a consequence, Clients contend that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Clients contend that Defendants' conduct violated Labor Code sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the representative action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Clients, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendants. Clients therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

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—Clients 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, Defendants are on notice that Clients 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.

If the agency needs any further information, please do not hesitate to ask. The representative action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients 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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

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Attorneys for Plaintiffs MAKIYA EPPS and TESSIE HALEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MAKIYA EPPS, an individual, TESSIE
HALEY, an individual, on behalf of themselves,
and on behalf of all persons similarly situated,

Plaintiff,

vs.

SOAPY JOE'S GROUP, INC., a California
corporation; BHCW, INC. dba SOAPY JOE'S
CAR WASH; SOAPY JOE'S SAN MARCOS,
INC.; SOAPY JOE'S BONITA, INC.; SOAPY
JOE'S ESCONDIDO, INC.; SOAPY JOE'S
SORRENTO VALLEY, INC.; SOAPY JOE'S
IMPERIAL BEACH, INC.; SOAPY JOE'S
SAN YSIDRO, INC.; SOAPY JOE'S LA
MESA, INC.; SWEETWATER CAR WASH,
LLC; SOAPY JOE'S OCEANSIDE, INC.;
SOAPY JOE'S RANCHO SAN DIEGO, INC.;
LORENS ATTHISHA, and individual, TALAL
SHEENA, an individual, 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.*

DEMAND FOR JURY TRIAL

1 Plaintiffs MAKIYA EPPS, an individual, and TESSIE HALEY, an individual, (collectively
2 “PLAINTIFFS”), in their representative capacity on behalf of themselves, the State of California, and
3 fellow current and former AGGRIEVED EMPLOYEES, defined *supra*, against SOAPY JOE’S
4 GROUP, INC., BHCW, INC. dba SOAPY JOE’S CAR WASH, SOAPY JOE’S SAN MARCOS, INC.,
5 SOAPY JOE’S BONITA, INC., SOAPY JOE’S ESCONDIDO, INC., SOAPY JOE’S SORRENTO
6 VALLEY, INC., SOAPY JOE’S IMPERIAL BEACH, INC., SOAPY JOE’S SAN YSIDRO, INC.,
7 SOAPY JOE’S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE’S OCEANSIDE,
8 INC., SOAPY JOE’S RANCHO SAN DIEGO, INC., LORENS ATTHISHA, TALAL SHEENA
9 (collectively “DEFENDANTS”), allege on information and belief, except for their own acts and
10 knowledge which are based on personal knowledge, the following:

11 **INTRODUCTION**

12 1. PLAINTIFFS bring this representative action pursuant to the Private Attorneys General
13 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
14 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
15 violations under the California Labor Code.

16 2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT decreased
17 their employment-related costs by systematically violating California wage and hour laws.

18 3. DEFENDANT’s systematic pattern of wage and hour and Industrial Welfare Commission
19 (“IWC”) Wage Order violations toward PLAINTIFFS and other aggrieved employees in California
20 include, *inter alia*:

- 21 a. Failure to provide compliant meal and rest periods;
 - 22 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
 - 23 c. Failure to pay all minimum, regular and overtime wages;
 - 24 d. Failure to pay overtime and sick pay at the correct regular rate of pay;
 - 25 e. Failure to reimburse for business expenses;
 - 26 f. Failure to maintain true and accurate records;
 - 27 g. Failure to pay sick time;
- 28

h. Failure to provide accurate itemized wage statements; and

i. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFFS bring this representative action against DEFENDANTS on behalf of themselves and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFFS reserve the right to name additional representatives throughout the State of California.

THE PARTIES

6. DEFENDANT SOAPY JOE'S GROUP, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

7. DEFENDANT BHCW, INC. dba SOAPY JOE'S CAR WASH, is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

8. DEFENDANT SOAPY JOE'S SAN MARCOS, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

9. DEFENDANT SOAPY JOE'S BONITA, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

10. DEFENDANT SOAPY JOE'S ESCONDIDO, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

11. DEFENDANT SOAPY JOE'S SORRENTO VALLEY, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

1 12. DEFENDANT SOAPY JOE'S IMPERIAL BEACH, INC., is a California corporation that
2 at all relevant times mentioned herein conducted and continues to conduct substantial business in the
3 state of California, county of San Diego, owns, operates and/or manages several car wash locations.

4 13. DEFENDANT SOAPY JOE'S SAN YSIDRO, INC., is a California corporation that at
5 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
6 of California, county of San Diego, owns, operates and/or manages several car wash locations.

7 14. DEFENDANT SOAPY JOE'S LA MESA, INC., is a California corporation that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
9 California, county of San Diego, owns, operates and/or manages several car wash locations.

10 15. DEFENDANT SWEETWATER CAR WASH, LLC, is a limited liability company that at
11 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
12 of California, county of San Diego, owns, operates and/or manages several car wash locations.

13 16. DEFENDANT SOAPY JOE'S OCEANSIDE, INC., is a California corporation that at all
14 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
15 California, county of San Diego, owns, operates and/or manages several car wash locations.

16 17. DEFENDANT SOAPY JOE'S RANCHO SAN DIEGO, INC, is a California corporation
17 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
18 the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

19 18. DEFENDANT LORENS ATTISHA, is an individual that at all relevant times mentioned
20 herein conducted and continues to conduct substantial business in the state of California, county of San
21 Diego, owns, operates and/or manages several car wash locations.

22 19. DEFENDANT TALAL SHEENA is an individual that at all relevant times mentioned
23 herein conducted and continues to conduct substantial business in the state of California, county of San
24 Diego, owns, operates and/or manages several car wash locations

25 20. PLAINTIFF EPPS was employed by DEFENDANTS as a non-exempt employee, paid on
26 an hourly basis and entitled to minimum wage and overtime pay and legally compliant meal and rest
27 periods from July 2018 to March 2021.
28

1 21. PLAINTIFF HALEY was employed by DEFENDANTS as a non-exempt employee, paid
2 on an hourly basis and entitled to minimum wage and overtime pay and legally complaint meal and ret
3 periods from June 2020 to March 2021.

4 22. PLAINTIFFS bring this action in their representative capacity on behalf of the State of
5 California and on behalf of all of DEFENDANT's current and former non-exempt employees employed
6 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
7 *seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for DEFENDANT between
8 February 28, 2020, and the present ("PAGA PERIOD").

9 23. PLAINTIFFS are an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
10 2699(c) because they were employed by DEFENDANT and suffered one or more of the alleged Labor
11 Code violations committed by DEFENDANT.

12 24. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times
13 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
14 applicable Industrial Welfare Commission Wage Order.

15 25. Each of the fictitiously named defendant participated in the acts alleged in this Complaint.
16 The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are
17 presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true
18 names and capacities of these fictitiously named defendants when their true names are ascertained.
19 PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious defendants
20 have participated in the acts alleged in this Complaint.

21 26. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
22 "DEFENDANTS"), were PLAINTIFFS' employers or persons acting on behalf of PLAINTIFFS'
23 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
24 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
25 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
26 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

27 27. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of
28 PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person,

1 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
2 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
3 for each underpaid employee.

4 **JOINT EMPLOYER**

5 28. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
6 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

7 29. Section 558 of the California Labor Code provides that “any employer or other person
8 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
10 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

11 30. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person acting
12 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
13 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
14 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

15 31. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
16 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
17 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
18 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
19 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
20 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

21 32. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS, and
22 each of them, are subject to civil penalties for their failure to pay PLAINTIFFS and the AGGRIEVED
23 EMPLOYEES the appropriate wages as complained of herein and proximately caused the complaints,
24 injuries, and damages alleged herein.

25 33. At all relevant times, each Defendant, whether named or fictitious, was the agent,
26 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
27 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
28 of the other.

1 illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent
2 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS,
3 the PAGA PERIOD should be adjusted accordingly.

4 **Meal Period Violations**

5 39. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
6 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked, meaning the
7 time during which an employee is subject to the control of an employer, including all the time the
8 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
9 DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying
10 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
11 PLAINTIFFS' demanding work requirements, being required to manage work shifts, maintain
12 equipment, and enter data throughout their shifts, and DEFENDANTS' under staffing, DEFENDANTS
13 required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
14 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked
15 out for what should have been PLAINTIFFS' off-duty meal break. Indeed, there were many days
16 where PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working
18 without their time being accurately recorded and without compensation at the applicable minimum
19 wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and
20 other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
21 records.

22 40. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
23 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
24 for the actual time these employees worked each day, including overtime hours. As a result,
25 DEFENDANTS were able to, and did in fact systematically, unlawfully and unilaterally, alter the time
26 recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED
27 EMPLOYEES in order to avoid paying these employees the applicable overtime compensation for
28 overtime working and to avoid paying these employees for missed meal breaks. As a result,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by regularly working
2 without their time being accurately recorded and without compensation at the applicable overtime rates.

3 41. The mutability of the timekeeping system allowed DEFENDANTS to alter employee time
4 records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system
5 so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked out
6 for a thirty (30) minute meal break when in fact the employees were not at all times provided an off-
7 duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice
8 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
9 compensating them for missed meal breaks. As a result of their rigorous work schedules, PLAINTIFF
10 and other AGGRIEVED EMPLOYEES were also from time to time unable to take thirty (30) minute
11 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for more
13 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed
14 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some
15 workdays in when these employees were required by DEFENDANTS to work ten (10) hours of work.
16 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
17 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
18 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
19 each employee at the busy car washes, they provided services for.

20 **Rest Period Violations**

21 42. From time-to-time during the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
23 provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to
24 manage work shifts, maintain equipment, and enter data throughout their shifts, and DEFENDANTS'
25 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods
26 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
27 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
28 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)

minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on the premises, on duty, and/or on call. PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

43. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for their overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without compensation at the correct overtime rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

44. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

45. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS and/or incentive compensation when employees worked certain shifts, i.e., shift differentials. Specifically, PLAINTIFFS and AGGRIEVED EMPLOYEES received bonuses and/or commissions for the sale of memberships and/or products. Additionally, DEFENDANT gave PLAINTIFFS and other AGGRIEVED EMPLOYEES gift cards and cash awards when the employees met various performance goals set by DEFENDANT. The incentive payments are identified as "Bonus" and/or "Commission"

1 in the wage statements issued by DEFENDANTS to PLAINTIFFS and the other AGGRIEVED
2 EMPLOYEES. The non-discretionary bonus program provided all employees paid on an hourly basis
3 with incentive compensation when the employees met the various performance goals set by
4 DEFENDANTS and/or worked certain shifts for Defendants.

5 46. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
6 where PLAINTIFFS and other AGGRIEVED EMPLOYEES worked overtime, were owed meal and/or
7 rest period premium payments, and/or sick pay, and earned this non-discretionary bonus compensation
8 and/or received gift cards and/or cash awards, DEFENDANTS failed to accurately include the non-
9 discretionary bonus compensation and/or received gift cards and/or cash awards as part of the
10 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime
11 hours worked. Further, when calculating the regular rate of pay in order to pay sick pay to
12 PLAINTIFFS and AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive
13 compensation as part of the employees' "regular rate of pay" for purposes of calculating sick pay.
14 Management and supervisors described the incentive/bonus program to potential and new employees
15 as part of the compensation package. As a matter of law, the incentive compensation received by
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay."
17 The failure to do so has resulted in a systematic underpayment of overtime and/or sick pay
18 compensation to PLAINTIFFS and other AGGRIEVED EMPLOYEES by DEFENDANTS.

19 47. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
20 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
21 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
22 that workweek. DEFENDANT'S conduct, as articulated herein, by failing to include the incentive
23 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
24 of Cal. Lab. Code § 246.

25 48. In violation of the applicable sections of the California Labor Code and the requirements
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
27 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFFS and
28 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and/or sick pay

1 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
2 the payment of the correct overtime and/or sick pay compensation as required by California law which
3 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
5 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

6 **Unreimbursed Business Expenses Violation**

7 49. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
8 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS and the other
9 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFFS and other
10 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
11 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
12 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
13 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
14 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
15 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
16 employee, at the time of obeying the directions, believed them to be unlawful."

17 50. In the course of their employment, DEFENDANTS required PLAINTIFFS and other
18 AGGRIEVED EMPLOYEES to use DEFENDANTS' their personal cell phones as a result of and in
19 furtherance of their job duties as employees for DEFENDANT. However, DEFENDANTS unlawfully
20 failed to reimburse PLAINTIFFS and other AGGRIEVED EMPLOYEES for their use of their personal
21 cell phones. As a result, in the course of their employment with DEFENDANTS the PLAINTIFFS and
22 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses, but were not limited to,
23 costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
24 DEFENDANT.

25 **Wage Statement Violations**

26 51. California Labor Code Section 226 requires an employer to furnish its employees an
27 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
28 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and only the last four digits of the employee's social security number or an employee
3 identification number other than a social security number, (8) the name and address of the legal entity
4 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 52. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
7 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
8 period premiums, were paid overtime in the same pay period where they earned a non-discretionary
9 incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide
10 PLAINTIFFS and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
11 which failed to show, among other things, all applicable hourly rates in effect during the pay period
12 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
13 payments or missed meal and rest periods.

14 53. For instance, PLAINTIFFS received remuneration from DEFENDANTS described as
15 "Adjustment". DEFENDANTS violated California Labor Code Section 226 by failing to list the
16 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
17 this line item of remuneration described as "Adjustment". PLAINTIFFS, and all those similarly
18 situated AGGRIEVED EMPLOYEES, suffered damage as a result of DEFENDANTS' aforementioned
19 violation because he could not promptly and easily determine from the wage statement alone the
20 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
21 this line item of remuneration described as "Adjustment".

22 54. In addition to the violations described above, DEFENDANTS, from time to time, failed
23 to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with
24 Cal. Lab. Code § 226, specifically DEFENDANTS failed to include the correct total number of hours
25 worked on the wage statements.

26 55. As a result, DEFENDANTS issued PLAINTIFFS and the other AGGRIEVED
27 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
28

violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum and Overtime Violations

56. During the PAGA PERIOD, from time-to-time DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFFS and other AGGRIEVED EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES necessary wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock, on days off and during meal periods.

57. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other AGGRIEVED EMPLOYEES to perform off-the-clock, including but not limited to, using their personal cellular phone to call employees, communicate with managers, scan documents, and send emails.

58. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other AGGRIEVED EMPLOYEES to remain available for work calls and emails while off-the-clock.

59. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFFS and other AGGRIEVED EMPLOYEES.

60. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments and employment conditions of PLAINTIFFS and other AGGRIEVED EMPLOYEES.

61. DEFENDANTS were able to track the amount of time PLAINTIFFS and other AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and other AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

62. PLAINTIFFS and other AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

63. DEFENDANTS' policies and practices deprived PLAINTIFFS and other AGGRIEVED EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFFS and other AGGRIEVED EMPLOYEES typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

64. DEFENDANTS knew or should have known that PLAINTIFFS and other AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

65. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent answering work related questions on days off, outside of work hours and during meal periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and other AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

66. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

68. PLAINTIFFS brings this Representative Action on behalf of the State of California with respect to themselves and all other current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

69. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of Labor Code Section 2699(c).

70. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFFS, on behalf of herself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

71. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated January 24, 2022, PLAINTIFFS gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit 1).

72. As of the date of the filing of this Complaint, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANTS’ violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

73. To the extent that it applies, PLAINTIFFS invoke the tolling permitted pursuant to the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

74. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and

1199, a civil penalty in the amount of one hundred dollars (\$100) per
AGGRIEVED EMPLOYEE per pay period for the initial violation and two
hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
for each subsequent violation [penalty per Labor Code Section].

75. For all provisions of the Labor Code for which civil penalty is not specifically provided,
Labor Code § 2699(f) imposes upon Defendant a penalty of 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. PLAINTIFFS and the
AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

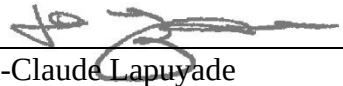
PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: January 24, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on all issues triable to a jury.

Dated: January 24, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

EXHIBIT 3

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
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San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

September 22, 2023

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

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

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

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

Mailed Individually To:

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

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

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

Dear LWDA Officer and Company Representatives:

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

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

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

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

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

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

- BACKGROUND -

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

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

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

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

- PAGA CLAIMS -

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

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

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

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

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

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

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

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

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,



Nicholas J. Ferraro

RJ

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

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

EXHIBIT 4

March 4, 2024

Labor & Workforce Development Agency

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

PAGA@dir.ca.gov

Via Online Submission

**B H C W, INC.,
DBA SOAPY JOE'S CAR WASH**

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOES BONITA, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S SORRENTO VALLEY, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S SAN YSIDRO, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SWEETWATER CAR WASH, LLC

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

**SOAPY JOE'S SAN MARCOS, INC.
(DBA SOAPY JOE'S CAR WASH)**

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S ESCONDIDO, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S IMPERIAL BEACH, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S OCEANSIDE, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S GROUP, INC.

c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

Via Certified Mail No. 9589 0710 5270 0410 5647 24

LORENS ATTISHA

The Plate Law Firm
1999 Sweetwater Road
National City, CA 91950

Via Certified Mail No. 9589 0710 5270 0410 5647 00

SOAPY JOE'S RANCHO SAN DIEGO, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

SOAPY JOE'S LA MESA, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

TALAL SHEENA

11465 Woodside Drive,
Santee, CA 92071

Via Certified Mail No. 9589 0710 5270 0410 5647 17

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents MAKIYA EPPS (Client "Epps") and TESSIE HALEY (Client "Haley") (collectively "Clients") and other aggrieved employees in a representative action against SOAPY JOE'S GROUP, INC. dba SOAPY JOE'S CAR WASH, BHCW, INC. dba SOAPY JOE'S CAR WASH, SOAPY JOE'S SAN MARCOS, INC., SOAPY JOE'S BONITA, INC., SOAPY JOE'S ESCONDIDO, INC., SOAPY JOE'S SORRENTO VALLEY, INC., SOAPY JOE'S IMPERIAL BEACH, INC., SOAPY JOE'S SAN YSIDRO, INC., SOAPY JOE'S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE'S OCEANSIDE, INC., SOAPY JOE'S RANCHO SAN DIEGO, INC., LORENS ATTISHA, TALAL SHEENA (collectively "Defendants"). This office intends to file the enclosed Representative Action Complaint on behalf of Clients 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.

Client Epps was employed by Defendants in California from July 2018 to March 2021. Client Haley was employed by Defendants in California from June 2020 to March 2021. Clients were paid on an hourly basis and entitled incentive compensation and to legally required meal and rest periods. The aggrieved employees intended to be covered by this correspondence include all of Defendants' employees, including all non-exempt and exempt employees. At all times during Clients' employment, Defendants failed to, among other things, provide Clients, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay. Defendants also failed to provide Clients with accurate and complete wage statements reflecting, among other things, the number of hours worked and the rate of pay.

As a consequence, Clients contend that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Clients contend that Defendants' conduct violated Labor Code sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, California Code of Regulations, Title 8, Section

1 1070(14) (Failure to Provide Seating) and applicable wage orders, and is therefore actionable pursuant to section 2699.3 *et seq.*

A true and correct copy of the proposed Complaint for the representative action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Clients, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendants. Clients therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

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—Clients 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, Defendants are on notice that Clients 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.

If the agency needs any further information, please do not hesitate to ask. The representative action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients 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.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya Silva (State Bar #348080)

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ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

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San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for Plaintiffs MAKIYA EPPS and TESSIE HALEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MAKIYA EPPS, an individual, TESSIE
HALEY, an individual, on behalf of themselves,
and on behalf of all persons similarly situated,

Plaintiff,

vs.

SOAPY JOE'S GROUP, INC., a California
corporation; BHCW, INC. dba SOAPY JOE'S
CAR WASH; SOAPY JOE'S SAN MARCOS,
INC.; SOAPY JOE'S BONITA, INC.; SOAPY
JOE'S ESCONDIDO, INC.; SOAPY JOE'S
SORRENTO VALLEY, INC.; SOAPY JOE'S
IMPERIAL BEACH, INC.; SOAPY JOE'S
SAN YSIDRO, INC.; SOAPY JOE'S LA
MESA, INC.; SWEETWATER CAR WASH,
LLC; SOAPY JOE'S OCEANSIDE, INC.;
SOAPY JOE'S RANCHO SAN DIEGO, INC.;
LORENS ATTHISHA, and individual, TALAL
SHEENA, an individual, and DOES 1 through
50, Inclusive;

Defendants.

Case No. 2022-37-00013622-CU-OE-CTL

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

1 Plaintiffs MAKIYA EPPS, an individual, and TESSIE HALEY, an individual, (collectively
2 “PLAINTIFFS”), in their representative capacity on behalf of themselves, the State of California, and
3 fellow current and former AGGRIEVED EMPLOYEES, defined *supra*, against SOAPY JOE’S
4 GROUP, INC., BHCW, INC. dba SOAPY JOE’S CAR WASH, SOAPY JOE’S SAN MARCOS , INC.,
5 SOAPY JOE’S BONITA, INC., SOAPY JOE’S ESCONDIDO, INC., SOAPY JOE’S SORRENTO
6 VALLEY, INC., SOAPY JOE’S IMPERIAL BEACH, INC., SOAPY JOE’S SAN YSIDRO, INC.,
7 SOAPY JOE’S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE’S OCEANSIDE,
8 INC., SOAPY JOE’S RANCHO SAN DIEGO, INC., LORENS ATTHISHA, TALAL SHEENA
9 (collectively “DEFENDANTS”), allege on information and belief, except for their own acts and
10 knowledge which are based on personal knowledge, the following:

11 **INTRODUCTION**

12 1. PLAINTIFFS bring this representative action pursuant to the Private Attorneys General
13 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
14 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
15 violations under the California Labor Code.

16 2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT decreased
17 their employment-related costs by systematically violating California wage and hour laws.

18 3. DEFENDANT’s systematic pattern of wage and hour and Industrial Welfare Commission
19 (“IWC”) Wage Order violations toward PLAINTIFFS and other aggrieved employees in California
20 include, *inter alia*:

- 21 a. Failure to provide compliant meal and rest periods;
- 22 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 23 c. Failure to pay all minimum, regular and overtime wages;
- 24 d. Failure to pay overtime and sick pay at the correct regular rate of pay;
- 25 e. Failure to reimburse for business expenses;
- 26 f. Failure to maintain true and accurate records;
- 27 g. Failure to pay sick time;
- 28

1 12. DEFENDANT SOAPY JOE'S IMPERIAL BEACH, INC., is a California corporation that
2 at all relevant times mentioned herein conducted and continues to conduct substantial business in the
3 state of California, county of San Diego, owns, operates and/or manages several car wash locations.

4 13. DEFENDANT SOAPY JOE'S SAN YSIDRO, INC., is a California corporation that at
5 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
6 of California, county of San Diego, owns, operates and/or manages several car wash locations.

7 14. DEFENDANT SOAPY JOE'S LA MESA, INC., is a California corporation that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
9 California, county of San Diego, owns, operates and/or manages several car wash locations.

10 15. DEFENDANT SWEETWATER CAR WASH, LLC, is a limited liability company that at
11 all relevant times mentioned herein conducted and continues to conduct substantial business in the state
12 of California, county of San Diego, owns, operates and/or manages several car wash locations.

13 16. DEFENDANT SOAPY JOE'S OCEANSIDE, INC., is a California corporation that at all
14 relevant times mentioned herein conducted and continues to conduct substantial business in the state of
15 California, county of San Diego, owns, operates and/or manages several car wash locations.

16 17. DEFENDANT SOAPY JOE'S RANCHO SAN DIEGO, INC, is a California corporation
17 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
18 the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

19 18. DEFENDANT LORENS ATTISHA, is an individual that at all relevant times mentioned
20 herein conducted and continues to conduct substantial business in the state of California, county of San
21 Diego, owns, operates and/or manages several car wash locations.

22 19. DEFENDANT TALAL SHEENA is an individual that at all relevant times mentioned
23 herein conducted and continues to conduct substantial business in the state of California, county of San
24 Diego, owns, operates and/or manages several car wash locations

25 20. PLAINTIFF EPPS was employed by DEFENDANTS as a non-exempt employee, paid on
26 an hourly basis and entitled to minimum wage and overtime pay and legally compliant meal and rest
27 periods from July 2018 to March 2021.
28

1 21. PLAINTIFF HALEY was employed by DEFENDANTS as a non-exempt employee, paid
2 on an hourly basis and entitled to minimum wage and overtime pay and legally complaint meal and ret
3 periods from June 2020 to March 2021.

4 22. PLAINTIFFS bring this action in their representative capacity on behalf of the State of
5 California and on behalf of all of DEFENDANT's current and former non-exempt employees employed
6 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
7 *seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for DEFENDANT between
8 February 28, 2020, and the present ("PAGA PERIOD").

9 23. PLAINTIFFS are an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
10 2699(c) because they were employed by DEFENDANT and suffered one or more of the alleged Labor
11 Code violations committed by DEFENDANT.

12 24. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times
13 were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
14 applicable Industrial Welfare Commission Wage Order.

15 25. Each of the fictitiously named defendant participated in the acts alleged in this Complaint.
16 The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are
17 presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true
18 names and capacities of these fictitiously named defendants when their true names are ascertained.
19 PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious defendants
20 have participated in the acts alleged in this Complaint.

21 26. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
22 "DEFENDANTS"), were PLAINTIFFS' employers or persons acting on behalf of PLAINTIFFS'
23 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
24 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
25 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
26 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

JOINT EMPLOYER

28. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

29. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

30. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

31. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

32. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS, and each of them, are subject to civil penalties for their failure to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

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1 33. At all relevant times, each Defendant, whether named or fictitious, was the agent,
2 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
3 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
4 of the other.

5 34. Each Defendant, whether named or fictitious, exercised control over PLAINTIFFS'
6 wages, working hours, and/or working conditions.

7 35. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
8 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the
9 acts of each Defendant are legally attributable to the other DEFENDANTS.

10 **JURISDICTION AND VENUE**

11 36. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFFS' claims for civil penalties
13 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq*

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

19 **THE CONDUCT**

20 38. In violation of the applicable sections of the California Labor Code and the requirements
21 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
22 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
23 complaint meal and rest period, failed to accurately compensate PLAINTIFFS and the other members
24 of the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and
25 the other AGGRIEVED EMPLOYEES for all time worked, failed to accurately calculate and pay
26 Plaintiff and other members of the AGGRIEVED EMPLOYEES for overtime worked, meal period
27 premiums and sick pay, failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for
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1 required business expenses, and failed to issue to PLAINTIFFS and the AGGRIEVED EMPLOYEES
2 with accurate itemized wage statements showing, among other things, all applicable hourly rates in
3 effect during the pay periods and the corresponding amount of time worked at each hourly rate.
4 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and
5 full payment for all time worked as required by California law which allows DEFENDANTS to
6 illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent
7 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS,
8 the PAGA PERIOD should be adjusted accordingly.

9 **Meal Period Violations**

10 39. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
11 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked, meaning the
12 time during which an employee is subject to the control of an employer, including all the time the
13 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
14 DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying
15 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
16 PLAINTIFFS' demanding work requirements, being required to manage work shifts, maintain
17 equipment, and enter data throughout their shifts, and DEFENDANTS' under staffing, DEFENDANTS
18 required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
19 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked
20 out for what should have been PLAINTIFFS' off-duty meal break. Indeed, there were many days
21 where PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other
22 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working
23 without their time being accurately recorded and without compensation at the applicable minimum
24 wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and
25 other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
26 records.

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1 40. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
2 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
3 for the actual time these employees worked each day, including overtime hours. As a result,
4 DEFENDANTS were able to, and did in fact systematically, unlawfully and unilaterally, alter the time
5 recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED
6 EMPLOYEES in order to avoid paying these employees the applicable overtime compensation for
7 overtime working and to avoid paying these employees for missed meal breaks. As a result,
8 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by regularly working
9 without their time being accurately recorded and without compensation at the applicable overtime rates.

10 41. The mutability of the timekeeping system allowed DEFENDANTS to alter employee time
11 records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system
12 so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked out
13 for a thirty (30) minute meal break when in fact the employees were not at all times provided an off-
14 duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice
15 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
16 compensating them for missed meal breaks. As a result of their rigorous work schedules, PLAINTIFF
17 and other AGGRIEVED EMPLOYEES were also from time to time unable to take thirty (30) minute
18 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for more
20 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed
21 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some
22 workdays in when these employees were required by DEFENDANTS to work ten (10) hours of work.
23 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
24 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
25 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
26 each employee at the busy car washes, they provided services for.

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Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

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1 44. State law provides that employees must be paid overtime at one-and-one-half times their
2 “regular rate of pay.” PLAINTIFFS and other AGGRIEVED EMPLOYEES were compensated at an
3 hourly rate plus incentive pay that was tied to specific elements of an employee’s performance.

4 45. The second component of PLAINTIFFS’ and other AGGRIEVED EMPLOYEES
5 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFFS and
6 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS
7 and/or incentive compensation when employees worked certain shifts, i.e., shift differentials.
8 Specifically, PLAINTIFFS and AGGRIEVED EMPLOYEES received bonuses and/or commissions
9 for the sale of memberships and/or products. Additionally, DEFENDANT gave PLAINTIFFS and other
10 AGGRIEVED EMPLOYEES gift cards and cash awards when the employees met various performance
11 goals set by DEFENDANT. The incentive payments are identified as “Bonus” and/or “Commission”
12 in the wage statements issued by DEFENDANTS to PLAINTIFFS and the other AGGRIEVED
13 EMPLOYEES. The non-discretionary bonus program provided all employees paid on an hourly basis
14 with incentive compensation when the employees met the various performance goals set by
15 DEFENDANTS and/or worked certain shifts for Defendants.

16 46. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
17 where PLAINTIFFS and other AGGRIEVED EMPLOYEES worked overtime, were owed meal and/or
18 rest period premium payments, and/or sick pay, and earned this non-discretionary bonus compensation
19 and/or received gift cards and/or cash awards, DEFENDANTS failed to accurately include the non-
20 discretionary bonus compensation and/or received gift cards and/or cash awards as part of the
21 employees’ “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime
22 hours worked. Further, when calculating the regular rate of pay in order to pay sick pay to
23 PLAINTIFFS and AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive
24 compensation as part of the employees’ “regular rate of pay” for purposes of calculating sick pay.
25 Management and supervisors described the incentive/bonus program to potential and new employees
26 as part of the compensation package. As a matter of law, the incentive compensation received by
27 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.”
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1 The failure to do so has resulted in a systematic underpayment of overtime and/or sick pay
2 compensation to PLAINTIFFS and other AGGRIEVED EMPLOYEES by DEFENDANTS.

3 47. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
4 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
5 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
6 that workweek. DEFENDANT'S conduct, as articulated herein, by failing to include the incentive
7 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
8 of Cal. Lab. Code § 246.

9 48. In violation of the applicable sections of the California Labor Code and the requirements
10 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
11 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFFS and
12 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and/or sick pay
13 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
14 the payment of the correct overtime and/or sick pay compensation as required by California law which
15 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
16 complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
17 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

18 **Unreimbursed Business Expenses Violation**

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

3 50. In the course of their employment, DEFENDANTS required PLAINTIFFS and other
4 AGGRIEVED EMPLOYEES to use DEFENDANTS' their personal cell phones as a result of and in
5 furtherance of their job duties as employees for DEFENDANT. However, DEFENDANTS unlawfully
6 failed to reimburse PLAINTIFFS and other AGGRIEVED EMPLOYEES for their use of their personal
7 cell phones. As a result, in the course of their employment with DEFENDANTS the PLAINTIFFS and
8 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses, but were not limited to,
9 costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
10 DEFENDANT.

11 **Wage Statement Violations**

12 51. California Labor Code Section 226 requires an employer to furnish its employees an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
14 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
15 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of the employee's social security number or an employee
17 identification number other than a social security number, (8) the name and address of the legal entity
18 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee.

20 52. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
21 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
22 period premiums, were paid overtime in the same pay period where they earned a non-discretionary
23 incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide
24 PLAINTIFFS and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
25 which failed to show, among other things, all applicable hourly rates in effect during the pay period
26 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
27 payments or missed meal and rest periods.
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1 53. From time to time during the PAGA PERIOD, DEFENDANTS also failed to provide
2 PLAINTIFFS and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
3 which contained all required elements of 226(a)(1-9).

4 54. For instance, PLAINTIFFS received remuneration from DEFENDANTS described as
5 “Adjustment”. DEFENDANTS violated California Labor Code Section 226 by failing to list the
6 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
7 this line item of remuneration described as “Adjustment”. PLAINTIFFS, and all those similarly
8 situated AGGRIEVED EMPLOYEES, suffered damage as a result of DEFENDANTS’ aforementioned
9 violation because he could not promptly and easily determine from the wage statement alone the
10 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
11 this line item of remuneration described as “Adjustment”.

12 55. In addition to the violations described above, DEFENDANTS, from time to time, failed
13 to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with
14 Cal. Lab. Code § 226, specifically DEFENDANTS failed to include the correct total number of hours
15 worked on the wage statements and the name and address of the legal entity that is the employer..

16 56. As a result, DEFENDANTS issued PLAINTIFFS and the other AGGRIEVED
17 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS’
18 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
19 to clerical or inadvertent mistake.

20 **Off-the-Clock Work Resulting in Minimum and Overtime Violations**

21 57. During the PAGA PERIOD, from time-to-time DEFENDANTS failed to accurately pay
22 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all hours worked. Specifically,
23 DEFENDANT from time-to-time required PLAINTIFFS and other AGGRIEVED EMPLOYEES to
24 perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay
25 PLAINTIFFS and other AGGRIEVED EMPLOYEES necessary wages for performing work at
26 DEFENDANTS’ direction, request, and benefit, while off-the clock, on days off and during meal
27 periods.
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1 58. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS
2 and other AGGRIEVED EMPLOYEES to perform off-the-clock, including but not limited to, using
3 their personal cellular phone to call employees, communicate with managers, scan documents, and send
4 emails.

5 59. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS
6 and other AGGRIEVED EMPLOYEES to remain available for work calls and emails while off-the-
7 clock.

8 60. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock
9 work performed by PLAINTIFFS and other AGGRIEVED EMPLOYEES.

10 61. DEFENDANTS controlled the work schedules, duties, protocols, applications,
11 assignments and employment conditions of PLAINTIFFS and other AGGRIEVED EMPLOYEES.

12 62. DEFENDANTS were able to track the amount of time PLAINTIFFS and other
13 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or
14 pay PLAINTIFFS and other AGGRIEVED EMPLOYEES all wages earned and owed for all the work
15 they performed.

16 63. PLAINTIFFS and other AGGRIEVED EMPLOYEES were non-exempt employees,
17 subject to the requirements of the California Labor Code.

18 64. DEFENDANTS' policies and practices deprived PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities
20 and their required meal periods. Because PLAINTIFFS and other AGGRIEVED EMPLOYEES
21 typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS'
22 policies and practices also deprived them of overtime pay.

23 65. DEFENDANTS knew or should have known that PLAINTIFFS and other AGGRIEVED
24 EMPLOYEES off-the-clock work was compensable under the law.

25 66. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited wages due
26 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent
27 answering work related questions on days off, outside of work hours and during meal
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1 periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and other
2 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
3 evidenced by DEFENDANTS' business records

4 **FIRST CAUSE OF ACTION**

5 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

6 **[Cal. Lab. Code §§ 2698, et seq.]**

7 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

8 67. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this
9 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

19 69. PLAINTIFFS brings this Representative Action on behalf of the State of California with
20 respect to themselves and all other current and former AGGRIEVED EMPLOYEES employed by
21 DEFENDANTS during the PAGA PERIOD.

22 70. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the
23 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
24 Labor Code Section 2699(c).

25 71. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
26 PLAINTIFFS, on behalf of herself and other current or former employees, to bring a civil action to
27 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3
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1 72. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
2 Section 2699.3. By certified letter, return receipt requested, dated January 24, 2022, PLAINTIFFS
3 gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to
4 DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including
5 the facts and theories to support the alleged violations. (See Exhibit 1).

6 73. As of the date of the filing of this Complaint, more than sixty-five (65) days after serving
7 the LWDA with notice of DEFENDANTS’ violations, the LWDA has not provided any notice by
8 certified mail of its intent to investigate the DEFENDANTS’ alleged violations as mandated by Labor
9 Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
10 PLAINTIFF may commence and is authorized to pursue this cause of action.

11 74. To the extent that it applies, PLAINTIFFS invoke the tolling permitted pursuant to the
12 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
13 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
14 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
15 statutes of limitation and repose for civil causes of action that exceed 180 days.

16 75. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the AGGRIEVED
17 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,
18 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, 2804 and
19 California Code of Regulations, Title 8, Section 1 1070(14) (failure to provide seating) in the following
20 amounts:

21 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
22 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
23 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
24 EMPLOYEE per pay period for each subsequent violation [penalty per
25 Labor Code Section 2699(f)(2)];

26 b. For violations of Labor Code Section 226(a), a civil penalty in the
27 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
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1 EMPLOYEE for any initial violation and one thousand dollars for each
2 subsequent violation [penalty per Labor Code Section 226.3];

3 c. For violations of Labor Code Sections 204, a civil penalty in the
4 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
5 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
6 EMPLOYEE for each subsequent violation [penalty per Labor Code
7 Section 210];

8 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
9 penalty in the amount of fifty dollars (\$50) for each underpaid
10 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
11 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
12 violation [penalty per Labor Code Section 558];

13 e. For violations of Labor Code Section 2269(a), a civil penalty in the
14 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
15 per violation in an initial citation and one thousand dollars (\$1,000) per
16 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
17 Labor Code Section 226.3];

18 f. For violations of Labor Code Section 1174(d), a civil penalty in the
19 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE
20 [penalty per Labor Code Section 1174.5].

21 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
22 1199, a civil penalty in the amount of one hundred dollars (\$100) per
23 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
24 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
25 for each subsequent violation [penalty per Labor Code Section].

26 76. For all provisions of the Labor Code for which civil penalty is not specifically provided,
27 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
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1 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
2 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFFS and the
3 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
4 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

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

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

12 (c) For such other relief as the Court deems just and proper.
13

14 Dated: March 4, 2024

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

16 By: 
17 Jean-Claude Lapuyade
18 Attorneys for PLAINTIFFS

19 **DEMAND FOR JURY TRIAL**

20 PLAINTIFFS demand a jury trial on all issues triable to a jury.
21

22 Dated: March 4, 2024

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

24 By: 
25 Jean-Claude Lapuyade
26 Attorneys for PLAINTIFFS
27
28

EXHIBIT 1



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January 24, 2022

Labor & Workforce Development Agency

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov

Via Online Submission

**B H C W, INC.,
DBA SOAPY JOE'S CAR WASH**
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11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOES BONITA, INC.
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SOAPY JOE'S SORRENTO VALLEY, INC.
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San Diego, CA 92127

SWEETWATER CAR WASH, LLC
c/o Kara Gervais
11417 West Broadway Court, Ste. F
San Diego, CA 92127

**SOAPY JOE'S SAN MARCOS, INC.
(DBA SOAPY JOE'S CAR WASH)**
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S ESCONDIDO, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S IMPERIAL BEACH, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S OCEANSIDE, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

SOAPY JOE'S GROUP, INC.
c/o Kara Gervais
11417 West Bernardo Court, Ste. F
San Diego, CA 92127

Via Certified Mail No. 7021 2720 0000 9972 5924

LORENS ATTISHA
The Plate Law Firm
1999 Sweetwater Road
National City, CA 91950

Via Certified Mail No. 7021 2720 0000 9972 5498

SOAPY JOE'S RANCHO SAN DIEGO, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

SOAPY JOE'S LA MESA, INC.

c/o Talal P. Sheena
11465 Woodside Drive,
Santee, CA 92071

TALAL SHEENA

11465 Woodside Drive,
Santee, CA 92071

Via Certified Mail No. 7021 2720 0000 9972 5481

Re: Notice of Violations of California Labor Code Sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents MAKIYA EPPS (Client "Epps") and TESSIE HALEY (Client "Haley") (collectively "Clients") and other aggrieved employees in a representative action against SOAPY JOE'S GROUP, INC. dba SOAPY JOE'S CAR WASH, BHCW, INC. dba SOAPY JOE'S CAR WASH, SOAPY JOE'S SAN MARCOS, INC., SOAPY JOE'S BONITA, INC., SOAPY JOE'S ESCONDIDO, INC., SOAPY JOE'S SORRENTO VALLEY, INC., SOAPY JOE'S IMPERIAL BEACH, INC., SOAPY JOE'S SAN YSIDRO, INC., SOAPY JOE'S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE'S OCEANSIDE, INC., SOAPY JOE'S RANCHO SAN DIEGO, INC., LORENS ATTISHA, TALAL SHEENA (collectively "Defendants"). This office intends to file the enclosed Representative Action Complaint on behalf of Clients 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.

Client Epps was employed by Defendants in California from July 2018 to March 2021. Client Haley was employed by Defendants in California from June 2020 to March 2021. Clients were paid on an hourly basis and entitled incentive compensation and to legally required meal and rest periods. The aggrieved employees intended to be covered by this correspondence include all of Defendants' employees, including all non-exempt and exempt employees. At all times during Clients' employment, Defendants failed to, among other things, provide Clients, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay. Defendants also failed to provide Clients with accurate and complete wage statements reflecting, among other things, the number of hours worked and the rate of pay.

As a consequence, Clients contend that Defendants failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Clients contend that Defendants' conduct violated Labor Code sections §§ 201, 202, 203, 204, 206.5, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,

1194, 1197, 1197.1, 1198, 1199, 2802, and 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the representative action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Clients, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendants. Clients therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

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—Clients 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, Defendants are on notice that Clients 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.

If the agency needs any further information, please do not hesitate to ask. The representative action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients 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,
JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

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Attorneys for Plaintiffs MAKIYA EPPS and TESSIE HALEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MAKIYA EPPS, an individual, TESSIE
HALEY, an individual, on behalf of themselves,
and on behalf of all persons similarly situated,

Plaintiff,

vs.

SOAPY JOE'S GROUP, INC., a California
corporation; BHCW, INC. dba SOAPY JOE'S
CAR WASH; SOAPY JOE'S SAN MARCOS,
INC.; SOAPY JOE'S BONITA, INC.; SOAPY
JOE'S ESCONDIDO, INC.; SOAPY JOE'S
SORRENTO VALLEY, INC.; SOAPY JOE'S
IMPERIAL BEACH, INC.; SOAPY JOE'S
SAN YSIDRO, INC.; SOAPY JOE'S LA
MESA, INC.; SWEETWATER CAR WASH,
LLC; SOAPY JOE'S OCEANSIDE, INC.;
SOAPY JOE'S RANCHO SAN DIEGO, INC.;
LORENS ATTHISHA, and individual, TALAL
SHEENA, an individual, 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.*

DEMAND FOR JURY TRIAL

1 Plaintiffs MAKIYA EPPS, an individual, and TESSIE HALEY, an individual, (collectively
2 “PLAINTIFFS”), in their representative capacity on behalf of themselves, the State of California, and
3 fellow current and former AGGRIEVED EMPLOYEES, defined *supra*, against SOAPY JOE’S
4 GROUP, INC., BHCW, INC. dba SOAPY JOE’S CAR WASH, SOAPY JOE’S SAN MARCOS, INC.,
5 SOAPY JOE’S BONITA, INC., SOAPY JOE’S ESCONDIDO, INC., SOAPY JOE’S SORRENTO
6 VALLEY, INC., SOAPY JOE’S IMPERIAL BEACH, INC., SOAPY JOE’S SAN YSIDRO, INC.,
7 SOAPY JOE’S LA MESA, INC., SWEETWATER CAR WASH, LLC, SOAPY JOE’S OCEANSIDE,
8 INC., SOAPY JOE’S RANCHO SAN DIEGO, INC., LORENS ATTHISHA, TALAL SHEENA
9 (collectively “DEFENDANTS”), allege on information and belief, except for their own acts and
10 knowledge which are based on personal knowledge, the following:

11 **INTRODUCTION**

12 1. PLAINTIFFS bring this representative action pursuant to the Private Attorneys General
13 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
14 aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour
15 violations under the California Labor Code.

16 2. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT decreased
17 their employment-related costs by systematically violating California wage and hour laws.

18 3. DEFENDANT’s systematic pattern of wage and hour and Industrial Welfare Commission
19 (“IWC”) Wage Order violations toward PLAINTIFFS and other aggrieved employees in California
20 include, *inter alia*:

- 21 a. Failure to provide compliant meal and rest periods;
- 22 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 23 c. Failure to pay all minimum, regular and overtime wages;
- 24 d. Failure to pay overtime and sick pay at the correct regular rate of pay;
- 25 e. Failure to reimburse for business expenses;
- 26 f. Failure to maintain true and accurate records;
- 27 g. Failure to pay sick time;

h. Failure to provide accurate itemized wage statements; and

i. Failure to timely pay wages due during, and upon termination of employment.

4. PLAINTIFFS bring this representative action against DEFENDANTS on behalf of themselves and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

5. PLAINTIFFS reserve the right to name additional representatives throughout the State of California.

THE PARTIES

6. DEFENDANT SOAPY JOE'S GROUP, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

7. DEFENDANT BHCW, INC. dba SOAPY JOE'S CAR WASH, is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

8. DEFENDANT SOAPY JOE'S SAN MARCOS, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

9. DEFENDANT SOAPY JOE'S BONITA, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

10. DEFENDANT SOAPY JOE'S ESCONDIDO, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

11. DEFENDANT SOAPY JOE'S SORRENTO VALLEY, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

12. DEFENDANT SOAPY JOE'S IMPERIAL BEACH, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

13. DEFENDANT SOAPY JOE'S SAN YSIDRO, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

14. DEFENDANT SOAPY JOE'S LA MESA, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

15. DEFENDANT SWEETWATER CAR WASH, LLC, is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

16. DEFENDANT SOAPY JOE'S OCEANSIDE, INC., is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

17. DEFENDANT SOAPY JOE'S RANCHO SAN DIEGO, INC, is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

18. DEFENDANT LORENS ATTISHA, is an individual that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations.

19. DEFENDANT TALAL SHEENA is an individual that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California, county of San Diego, owns, operates and/or manages several car wash locations

20. PLAINTIFF EPPS was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to minimum wage and overtime pay and legally compliant meal and rest periods from July 2018 to March 2021.

21. PLAINTIFF HALEY was employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis and entitled to minimum wage and overtime pay and legally complaint meal and rest periods from June 2020 to March 2021.

22. PLAINTIFFS bring this action in their representative capacity on behalf of the State of California and on behalf of all of DEFENDANT's current and former non-exempt employees employed in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for DEFENDANT between February 28, 2020, and the present ("PAGA PERIOD").

23. PLAINTIFFS are an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code § 2699(c) because they were employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

24. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

25. Each of the fictitiously named defendant participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFFS are informed and believe, and on that basis allege, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

26. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively "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.

27. DEFENDANTS were PLAINTIFFS' employers or persons acting on behalf of PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person,

1 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
2 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
3 for each underpaid employee.

4 **JOINT EMPLOYER**

5 28. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
6 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

7 29. Section 558 of the California Labor Code provides that “any employer or other person
8 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
10 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

11 30. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person acting
12 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
13 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
14 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

15 31. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
16 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
17 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
18 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
19 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
20 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

21 32. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS, and
22 each of them, are subject to civil penalties for their failure to pay PLAINTIFFS and the AGGRIEVED
23 EMPLOYEES the appropriate wages as complained of herein and proximately caused the complaints,
24 injuries, and damages alleged herein.

25 33. At all relevant times, each Defendant, whether named or fictitious, was the agent,
26 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
27 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
28 of the other.

1 illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent
2 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS,
3 the PAGA PERIOD should be adjusted accordingly.

4 **Meal Period Violations**

5 39. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
6 required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked, meaning the
7 time during which an employee is subject to the control of an employer, including all the time the
8 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
9 DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying
10 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
11 PLAINTIFFS' demanding work requirements, being required to manage work shifts, maintain
12 equipment, and enter data throughout their shifts, and DEFENDANTS' under staffing, DEFENDANTS
13 required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
14 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked
15 out for what should have been PLAINTIFFS' off-duty meal break. Indeed, there were many days
16 where PLAINTIFFS did not even receive a partial lunch. As a result, the PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime wages by regularly working
18 without their time being accurately recorded and without compensation at the applicable minimum
19 wage and overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFFS and
20 other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANTS' business
21 records.

22 40. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
23 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES
24 for the actual time these employees worked each day, including overtime hours. As a result,
25 DEFENDANTS were able to, and did in fact systematically, unlawfully and unilaterally, alter the time
26 recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED
27 EMPLOYEES in order to avoid paying these employees the applicable overtime compensation for
28 overtime working and to avoid paying these employees for missed meal breaks. As a result,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by regularly working
2 without their time being accurately recorded and without compensation at the applicable overtime rates.

3 41. The mutability of the timekeeping system allowed DEFENDANTS to alter employee time
4 records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS' timekeeping system
5 so as to create the appearance that PLAINTIFF and other AGGRIEVED EMPLOYEES clocked out
6 for a thirty (30) minute meal break when in fact the employees were not at all times provided an off-
7 duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice
8 denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise
9 compensating them for missed meal breaks. As a result of their rigorous work schedules, PLAINTIFF
10 and other AGGRIEVED EMPLOYEES were also from time to time unable to take thirty (30) minute
11 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANTS for more
13 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed
14 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for some
15 workdays in when these employees were required by DEFEDNANTS to work ten (10) hours of work.
16 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
17 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
18 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
19 each employee at the busy car washes, they provided services for.

20 **Rest Period Violations**

21 42. From time-to-time during the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
22 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
23 provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to
24 manage work shifts, maintain equipment, and enter data throughout their shifts, and DEFENDANTS'
25 inadequate staffing. Further, for the same reasons these employees were denied their first rest periods
26 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
27 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
28 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)

minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and other AGGRIEVED EMPLOYEES were, from time to time, required to remain on the premises, on duty, and/or on call. PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay

43. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for their overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without compensation at the correct overtime rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

44. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

45. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS and other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANTS and/or incentive compensation when employees worked certain shifts, i.e., shift differentials. Specifically, PLAINTIFFS and AGGRIEVED EMPLOYEES received bonuses and/or commissions for the sale of memberships and/or products. Additionally, DEFENDANT gave PLAINTIFFS and other AGGRIEVED EMPLOYEES gift cards and cash awards when the employees met various performance goals set by DEFENDANT. The incentive payments are identified as "Bonus" and/or "Commission"

1 in the wage statements issued by DEFENDANTS to PLAINTIFFS and the other AGGRIEVED
2 EMPLOYEES. The non-discretionary bonus program provided all employees paid on an hourly basis
3 with incentive compensation when the employees met the various performance goals set by
4 DEFENDANTS and/or worked certain shifts for Defendants.

5 46. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
6 where PLAINTIFFS and other AGGRIEVED EMPLOYEES worked overtime, were owed meal and/or
7 rest period premium payments, and/or sick pay, and earned this non-discretionary bonus compensation
8 and/or received gift cards and/or cash awards, DEFENDANTS failed to accurately include the non-
9 discretionary bonus compensation and/or received gift cards and/or cash awards as part of the
10 employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime
11 hours worked. Further, when calculating the regular rate of pay in order to pay sick pay to
12 PLAINTIFFS and AGGRIEVED EMPLOYEES, DEFENDANTS failed to include the incentive
13 compensation as part of the employees' "regular rate of pay" for purposes of calculating sick pay.
14 Management and supervisors described the incentive/bonus program to potential and new employees
15 as part of the compensation package. As a matter of law, the incentive compensation received by
16 PLAINTIFFS and other AGGRIEVED EMPLOYEES must be included in the "regular rate of pay."
17 The failure to do so has resulted in a systematic underpayment of overtime and/or sick pay
18 compensation to PLAINTIFFS and other AGGRIEVED EMPLOYEES by DEFENDANTS.

19 47. Specifically, California Labor Code Section 246 mandates that paid sick time for non-
20 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
21 the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in
22 that workweek. DEFENDANT'S conduct, as articulated herein, by failing to include the incentive
23 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in violation
24 of Cal. Lab. Code § 246.

25 48. In violation of the applicable sections of the California Labor Code and the requirements
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
27 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFFS and
28 the other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime and/or sick pay

1 compensation. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid
2 the payment of the correct overtime and/or sick pay compensation as required by California law which
3 allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
4 complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
5 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

6 **Unreimbursed Business Expenses Violation**

7 49. DEFENDANTS as a matter of corporate policy, practice, and procedure, intentionally,
8 knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS and the other
9 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFFS and other
10 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
11 DEFENDANTS. Under California Labor Code Section 2802, employers are required to indemnify
12 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code §
13 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
14 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
15 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
16 employee, at the time of obeying the directions, believed them to be unlawful."

17 50. In the course of their employment, DEFENDANTS required PLAINTIFFS and other
18 AGGRIEVED EMPLOYEES to use DEFENDANTS' their personal cell phones as a result of and in
19 furtherance of their job duties as employees for DEFENDANT. However, DEFENDANTS unlawfully
20 failed to reimburse PLAINTIFFS and other AGGRIEVED EMPLOYEES for their use of their personal
21 cell phones. As a result, in the course of their employment with DEFENDANTS the PLAINTIFFS and
22 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses, but were not limited to,
23 costs related to the use of their personal cellular phones, all on behalf of and for the benefit of
24 DEFENDANT.

25 **Wage Statement Violations**

26 51. California Labor Code Section 226 requires an employer to furnish its employees an
27 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
28 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and only the last four digits of the employee's social security number or an employee
3 identification number other than a social security number, (8) the name and address of the legal entity
4 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 52. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
7 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
8 period premiums, were paid overtime in the same pay period where they earned a non-discretionary
9 incentive award, or were not paid for all hours worked, DEFENDANTS also failed to provide
10 PLAINTIFFS and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
11 which failed to show, among other things, all applicable hourly rates in effect during the pay period
12 and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty
13 payments or missed meal and rest periods.

14 53. For instance, PLAINTIFFS received remuneration from DEFENDANTS described as
15 "Adjustment". DEFENDANTS violated California Labor Code Section 226 by failing to list the
16 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
17 this line item of remuneration described as "Adjustment". PLAINTIFFS, and all those similarly
18 situated AGGRIEVED EMPLOYEES, suffered damage as a result of DEFENDANTS' aforementioned
19 violation because he could not promptly and easily determine from the wage statement alone the
20 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
21 this line item of remuneration described as "Adjustment".

22 54. In addition to the violations described above, DEFENDANTS, from time to time, failed
23 to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with
24 Cal. Lab. Code § 226, specifically DEFENDANTS failed to include the correct total number of hours
25 worked on the wage statements.

26 55. As a result, DEFENDANTS issued PLAINTIFFS and the other AGGRIEVED
27 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
28

violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

Off-the-Clock Work Resulting in Minimum and Overtime Violations

56. During the PAGA PERIOD, from time-to-time DEFENDANTS failed to accurately pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required PLAINTIFFS and other AGGRIEVED EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANTS failed to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES necessary wages for performing work at DEFENDANTS' direction, request, and benefit, while off-the clock, on days off and during meal periods.

57. During the PAGA PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other AGGRIEVED EMPLOYEES to perform off-the-clock, including but not limited to, using their personal cellular phone to call employees, communicate with managers, scan documents, and send emails.

58. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFFS and other AGGRIEVED EMPLOYEES to remain available for work calls and emails while off-the-clock.

59. DEFENDANTS directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFFS and other AGGRIEVED EMPLOYEES.

60. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments and employment conditions of PLAINTIFFS and other AGGRIEVED EMPLOYEES.

61. DEFENDANTS were able to track the amount of time PLAINTIFFS and other AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and other AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

62. PLAINTIFFS and other AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

63. DEFENDANTS' policies and practices deprived PLAINTIFFS and other AGGRIEVED EMPLOYEES of all minimum, regular and overtime wages owed for the off-the-clock work activities and their required meal periods. Because PLAINTIFFS and other AGGRIEVED EMPLOYEES typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

64. DEFENDANTS knew or should have known that PLAINTIFFS and other AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

65. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent answering work related questions on days off, outside of work hours and during meal periods. DEFENDANTS' uniform policy and practice to not pay PLAINTIFFS and other AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")

[Cal. Lab. Code §§ 2698, et seq.]

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

66. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

68. PLAINTIFFS brings this Representative Action on behalf of the State of California with respect to themselves and all other current and former AGGRIEVED EMPLOYEES employed by DEFENDANTS during the PAGA PERIOD.

69. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of Labor Code Section 2699(c).

70. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFFS, on behalf of herself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

71. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated January 24, 2022, PLAINTIFFS gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit 1).

72. As of the date of the filing of this Complaint, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)(A), PLAINTIFF may commence and is authorized to pursue this cause of action.

73. To the extent that it applies, PLAINTIFFS invoke the tolling permitted pursuant to the California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for statutes of limitation and repose for civil causes of action that exceed 180 days.

74. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];

f. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and

1199, a civil penalty in the amount of one hundred dollars (\$100) per
AGGRIEVED EMPLOYEE per pay period for the initial violation and two
hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
for each subsequent violation [penalty per Labor Code Section].

75. For all provisions of the Labor Code for which civil penalty is not specifically provided,
Labor Code § 2699(f) imposes upon Defendant a penalty of 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. PLAINTIFFS and the
AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: January 24, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

DEMAND FOR JURY TRIAL

PLAINTIFFS demand a jury trial on all issues triable to a jury.

Dated: January 24, 2022

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFFS

EXHIBIT 5

EXHIBIT 6

JCL Law Firm
Unbilled Time
Activity: All Dates

Activity Date	Employee	Memo/Description	Rate	Duration	Amount
Epps v. Soapy Joes (002-286)					
01/10/2022	Jean Claude Lapuyade	Fact Investigation - Reviewed Client File and Employee File	700.00	3.6	2,520.00
01/11/2022	Jean Claude Lapuyade	Legal Research - Claim Analysis	700.00	3.6	2,520.00
01/14/2022	Jean Claude Lapuyade	Drafted PAGA Notice	700.00	3.2	2,240.00
03/11/2022	Jean Claude Lapuyade	Phone Call with Client - Haley	700.00	0.6	420.00
04/11/2022	Jean Claude Lapuyade	Pleadings - Drafted, Edited and Finalized Complaint	700.00	2.9	2,030.00
08/18/2022	Jean Claude Lapuyade	Case Management - Email Re Service	700.00	0.3	210.00
09/07/2022	Jean Claude Lapuyade	Case Management - drafted status letter to clients	700.00	1.3	910.00
10/12/2022	Jean Claude Lapuyade	Discovery - Drafted, Revised and Edited SI (Set 1)	700.00	1.6	1,120.00
10/14/2022	Jean Claude Lapuyade	Discovery - Drafted, revised and edited RFP (Set 1), RFA (Set 1), FR-G (Set 1) and FR-E (Set1)	700.00	3.9	2,730.00
10/24/2022	Jean Claude Lapuyade	Case Management - TCW OC Re Pleadings and Arbitration	700.00	0.4	280.00
11/03/2022	Jean Claude Lapuyade	Law and Motion - R&R Defense Letter Re Claims and Demurrer	700.00	0.9	630.00
11/07/2022	Jean Claude Lapuyade	Case Management - Emails Re Service	700.00	0.3	210.00
11/21/2022	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Service	700.00	0.1	70.00
11/21/2022	Monnett DeLaTorre	Review and edit Case Management Conference statement.	625.00	0.2	125.00
11/21/2022	Sydney Castillo-Johnson	Review CMS	450.00	0.4	180.00
12/09/2022	Jean Claude Lapuyade	Law and Motion - R&R Notice of Ruling	700.00	0.3	210.00
12/09/2022	Sydney Castillo-Johnson	Review Notice of Ruling	450.00	0.4	180.00
12/09/2022	Sydney Castillo-Johnson	Attend CMC	450.00	1	450.00
12/12/2022	Jean Claude Lapuyade	Case Management - Emails to/from OC Re Pleading Extension	700.00	0.3	210.00
12/30/2022	Jean Claude Lapuyade	Law and Motion - R&R Defendant's Motion to compel and associated legal research	700.00	3.2	2,240.00
01/06/2023	Jean Claude Lapuyade	Case Management - drafted status letter to clients re MTC arb.	700.00	1.7	1,190.00
01/24/2023	Monnett DeLaTorre	Strategy meeting with litigation team regarding legal arguments to be made in opposition to Motion to Compel and arguments associated with Viking River.	625.00	0.6	375.00
01/24/2023	Monnett DeLaTorre	Initial review of motion and Arbitration agreement in order to determine scope of legal arguments to be made in opposition.	625.00	2.7	1,687.50
02/21/2023	Jean Claude Lapuyade	Case Management - Drafted, Revised and Edited CMS	700.00	1	700.00
03/02/2023	Jean Claude Lapuyade	Case Manage - Emails to/from OC Re Stip	700.00	0.2	140.00
03/20/2023	Jean Claude Lapuyade	Case Management - drafted status letter to clients	700.00	1.2	840.00
04/10/2023	Monnett DeLaTorre	Teleconference with legal team regarding arguments made in opposition regarding exclusion, review law and legal arguments used and prepare analysis of key differences.	625.00	1	625.00
04/16/2023	Monnett DeLaTorre	Conduct telephone discussions with clients to get additional facts to support unconscionability arguments, begin editing and drafting Opposition to Motion to Compel Arbitration, review declaration of Human Resources representative and prepare points that are in conflict with client's testimony	625.00	3.5	2,187.50
04/16/2023	Monnett DeLaTorre	Teleconference with client to discuss relevant points to assist in opposing motion to compel arbitration.	625.00	0.5	312.50
04/24/2023	Monnett DeLaTorre	Drafted P&As in opposition to defendant's motion to compel arbitration	625.00	6.4	4,000.00
04/25/2023	Monnett DeLaTorre	Meet and Confer teleconference with opposing counsel to discuss case in anticipation of CMC.	625.00	0.3	187.50
04/27/2023	Jean Claude Lapuyade	Law and Motion - revised and edited MTC Arb opposition	700.00	2.6	1,820.00
04/27/2023	Monnett DeLaTorre	Multiple emails and telephone conversations with Ms. Hailey regarding modifications needed to her Declaration, revise declaration and revise memorandum of points and authorities.	625.00	1	625.00
05/05/2023	Jean Claude Lapuyade	Law and Motion - R&R Defendant's Reply	700.00	2.9	2,030.00
05/08/2023	Monnett DeLaTorre	Review defendant's reply brief and supporting declaration, contact client and identify case law that must be researched in preparation for hearing.	625.00	3.1	1,937.50
05/11/2023	Jean Claude Lapuyade	Law and Motion - R&R Court's Tentative	700.00	0.3	210.00
05/11/2023	Monnett DeLaTorre	Review tentative and conduct initial research into PAGA carve out and interpretation of contract terms in preparation for hearing.	625.00	2	1,250.00
05/12/2023	Monnett DeLaTorre	Prepare argument outline to be used in court during oral argument in preparation for hearing on Motion to Compel Arbitration.	625.00	1	625.00
05/12/2023	Monnett DeLaTorre	Attend Motion to Compel Arbitration hearing and provide update to litigation team regarding the court's order.	625.00	1.4	875.00

05/12/2023	Monnett DeLaTorre	Review and respond to email from opposing counsel regarding our intent to argue the motion.	625.00	0.1	62.50
06/21/2023	Maria Watters	Submitted and served Epps and Haley Arb Demands	250.00	1.5	375.00
07/18/2023	Monnett DeLaTorre	Review AAA initial demand document for filing.	625.00	0.4	250.00
08/01/2023	Jean Claude Lapuyade	Case Management - Email to/from AAA Re Commencement	700.00	0.3	210.00
09/06/2024	Jean Claude Lapuyade	Case Management - drafted status letter to clients re upcoming mediation and claims analysis	700.00	1.8	1,260.00
09/10/2024	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	700.00	0.5	350.00
09/17/2024	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	700.00	0.2	140.00
09/23/2024	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data Issues	700.00	0.3	210.00
09/25/2024	Jean Claude Lapuyade	Discovery - Emails to/from OC Re Mediation Data	700.00	0.6	420.00
10/15/2024	Jean Claude Lapuyade	Discovery - Drafted, Revised and Edited Damages Assumptions and outline of claims for expert	700.00	3.1	2,170.00
10/21/2024	Jean Claude Lapuyade	Researched legal issues for mediation brief (RROP, inside sales, 226 and associated PAGA Penalties) and drafted internal memo for mediation brief	700.00	6.4	4,480.00
10/21/2024	Jean Claude Lapuyade	Discovery - R&R Expert Report Re Damages Report	700.00	0.7	490.00
10/24/2024	Monnett DeLaTorre	Drafted mediation brief	625.00	7	4,375.00
10/30/2024	Jean Claude Lapuyade	Law and Motion - Reviewed, Revised and Edited Mediation Brief	700.00	2.9	2,030.00
11/04/2024	Jean Claude Lapuyade	Mediation - Attended Mediation	700.00	8.5	5,950.00
11/04/2024	Monnett DeLaTorre	Prepare for and attend mediation with Gig Kyriacou.	625.00	8.5	5,312.50
11/08/2024	Jean Claude Lapuyade	Mediation - TCW Mediator Re Proposal	700.00	0.5	350.00
11/13/2024	Monnett DeLaTorre	Team strategy meeting regarding communications with clients as to MOU.	625.00	0.2	125.00
11/13/2024	Perssia Razma	Settlement/case management- emails w co-counsel re mou	425.00	0.3	127.50
11/18/2024	Perssia Razma	Case management- emails/discussion w co-counsel re MOU	425.00	0.5	212.50
11/19/2024	Perssia Razma	Case management- call w client re MOU	425.00	0.2	85.00
11/20/2024	Perssia Razma	Case management- emails w/co-counsel re client correspondence/draft client correspondence re settlement/case status	425.00	0.6	255.00
11/21/2024	Perssia Razma	Case management-call w/ co-counsel/client re case status update	425.00	0.3	127.50
11/25/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	700.00	0.3	210.00
12/02/2024	Perssia Razma	Settlement/dismissal- reviewed/revised MOU draft	425.00	1	425.00
12/05/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	700.00	0.2	140.00
12/09/2024	Jean Claude Lapuyade	Settlement - Emails to/from Admin Re Data and Admin	700.00	0.5	350.00
12/12/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	700.00	0.5	350.00
12/13/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re SAR	700.00	0.5	350.00
12/13/2024	Perssia Razma	Prepped for/attended sc hearing	425.00	1	425.00
12/18/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	700.00	0.4	280.00
12/18/2024	Perssia Razma	Case management- client updates drafts	425.00	0.3	127.50
12/20/2024	Jean Claude Lapuyade	Settlement - Emails to/from OC Re MOU	700.00	0.4	280.00
03/07/2025	Perssia Razma	Settlement/case management- emails w co-counsel/oc re SAR	425.00	0.6	255.00
03/12/2025	Jean Claude Lapuyade	Settlement - emails to/from OC RE SAR and MPA hearing date	700.00	0.4	280.00
03/14/2025	Jean Claude Lapuyade	Settlement - emails to/from Admin re class data link	700.00	0.5	350.00
03/18/2025	Perssia Razma	Settlement- revisions to SAR	425.00	1	425.00
03/19/2025	Jean Claude Lapuyade	Law and Motion - emails to/from co counsel re approval motion dec. ISO	700.00	0.3	210.00
03/19/2025	Jean Claude Lapuyade	Settlement - emails to/from OC Re SAR	700.00	0.4	280.00
03/19/2025	Perssia Razma	Law and Motion- SA draft	425.00	4	1,700.00
03/20/2025	Jean Claude Lapuyade	Law and Motion - Revised and edited P&AS ISO Approval Motion and Proposed Order	700.00	2.9	2,030.00
03/24/2025	Jean Claude Lapuyade	Law and motion - R&R defense revisions to Approval motion and emails to/from OC Re same	700.00	0.9	630.00

Total for Epps v. Soapy Joes (002-286)

123.4 \$ 79,567.50

EXHIBIT 7

JCL Law Firm

Transaction Report

All Dates

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
Epps v. Soapy Joes (002-286)						
01/25/2022	Expense		LWDA		75.00	75.00
01/31/2022	Journal Entry	Jan 2022		Copies for Jan 2022	9.70	84.70
		Postage				
01/31/2022	Journal Entry	Jan 2022		Postage for Jan 2022	25.68	110.38
		Postage				
02/28/2022	Journal Entry	Feb 2022		Copies for Feb 2022	2.90	113.28
		Postage				
03/31/2022	Journal Entry	Mar 2022		Postage for Mar 2022	8.36	121.64
		Postage				
04/13/2022	Expense		One Legal LLC	One Legal Order Number: 18023489 - Filing Fee Re: Complaint, Civil Case Cover Sheet, Original Summons	460.70	582.34
04/30/2022	Journal Entry	April 2022		Copies for April 2022	14.90	597.24
		Postage				
07/31/2022	Journal Entry	July 2022		Copies for July 2022	0.10	597.34
		Postage				
07/31/2022	Journal Entry	July 2022		Postage for July 2022	0.73	598.07
		Postage				
11/14/2022	Expense		One Legal LLC	One Legal Order Number: 19288512 - Filing Fee Re: Notice and Acknowledgment of Receipt, Proof of Service	12.87	610.94
11/21/2022	Expense		One Legal LLC	One Legal Order Number: 19338085 - Filing Fee Re: Case Management Statment, Proof of Service	12.87	623.81
11/30/2022	Journal Entry	Nov. 2022		Postage for November 2022	0.57	624.38
		Postage				
11/30/2022	Journal Entry	Nov. 2022		Copies for November 2022	1.20	625.58
		Postage				
12/08/2022	Check	3047	Knox Attorney Services, Inc.	Invoices 4384272-4384283, 4384437, 4384438	694.90	1,320.48
12/09/2022	Expense		One Legal LLC	One Legal Order Number: 19443157 - Filing Fee Re: Notice of Ruling, Proof of Service	12.87	1,333.35
12/31/2022	Journal Entry	Dec 2022		Postage for December 2022	0.57	1,333.92
		Postage				
12/31/2022	Journal Entry	Dec 2022		Copies for December 2022	0.80	1,334.72
		Postage				
02/23/2023	Expense		One Legal LLC	One Legal Order no. 19889833 - Filing Fee Re: Case Management Statement, Proof of Service	13.33	1,348.05
02/28/2023	Journal Entry	Feb 2023		Postage for February 2023	0.60	1,348.65
		Postage				
02/28/2023	Journal Entry	Feb 2023		Copies for February 2023	1.10	1,349.75
		Postage				
05/02/2023	Expense		One Legal LLC	One Legal Order Number: 20325945 - Filing Fee RE: Opposition - Other, Declaration - Other, Request for Judicial Notice, Proof of Service	13.33	1,363.08
05/12/2023	Expense		San Diego Superior Court		5.00	1,368.08
05/31/2023	Journal Entry	May 2023		Copies for May 2023	4.20	1,372.28
		Postage				
06/30/2023	Journal Entry	June 2023		Postage for June 2023	4.20	1,376.48
		Postage				
06/30/2023	Journal Entry	June 2023		Copies for June 2023	7.60	1,384.08
		Postage				
07/31/2023	Journal Entry	July 2023		Copies for July 2023	0.10	1,384.18

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	AMOUNT	BALANCE
09/30/2023	Journal Entry	Postage Sept. 2023		Copies for September 2023	3.60	1,387.78
06/30/2024	Journal Entry	Postage June 2024 Copies		June 2024 Copies	0.20	1,387.98
09/06/2024	Check	3943	Kyriacou Mediation	Mediation Deposit	6,600.00	7,987.98
09/30/2024	Journal Entry	Aug/Sept. 2024 Post.		Aug/Sept 2024 Postage	0.69	7,988.67
11/20/2024	Check	4041	Berger Consulting Group	Inv. 13027	2,580.00	10,568.67
11/30/2024	Journal Entry	Nov 2024 Postage		November 2024 Postage	11.02	10,579.69
11/30/2024	Journal Entry	Nov 2024 Copies		November 2024 Copies	2.50	10,582.19
12/31/2024	Journal Entry	Dec 2024 Copies		December 2024 Copies	2.50	10,584.69
12/31/2024	Check		ADP Payroll	Mileage	11.39	10,596.08
12/31/2024	Check		ADP Payroll	Parking	41.00	10,637.08
Total for Epps v. Soapy Joes (002-286)					\$10,637.08	
TOTAL					\$10,637.08	

EXHIBIT 8

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Perssia Razma, Esq.

California Bar Number 351398

Associate Attorney

Biography:

Ms. Razma is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Razma's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Perssia was born and raised in Los Angeles, California. She earned a Bachelor of Arts in 2020 at San Diego State University in Psychology. In 2023, Perssia earned her Juris Doctor from the University of San Diego School of Law.

Education:

- **University of San Diego School of Law**
 - J.D. - 2023
- **San Diego State University**
 - B.A. – 2020
 - Major: Psychology

Sydney Castillo-Johnson, Esq.

California Bar Number 343881

Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

JCL Law Firm, APC - REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521 (2017).
- *Duran v. Employbridge Holding Co.*, 92 Cal.App.5th 59 (2023).

EXAMPLES OF THE JCL LAW FIRM'S REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.*, San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a \$450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a \$900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$372,500.00 class action and PAGA action settlement for, *inter alia*, failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a \$750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a \$220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a \$180,000.00 class action and PAGA action settlement for, *inter alia*, failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a \$495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, Inc., et al.*, Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a \$200,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.*, Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a \$144,000.00 class action and PAGA action settlement for, *inter alia*, unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC*, Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon. Elihu M. Berle approved a \$160,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez v. EAH, Inc.*, Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a \$1,450,000.00 class action and PAGA action settlement for, *inter alia*, failure to compensate overtime and redeemed sick pay at the regular rate of pay. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy*, San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a \$980,000.00 class action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a \$175,000.00 class action and PAGA action settlement for, *inter alia*, wage statement violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Chrestensen v. Northeastern Rural Health Clinics Lassen*, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a \$270,000.00 class action and PAGA action settlement for, *inter alia*, unpaid overtime wages. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.*, Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a \$225,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.*, San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a \$315,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC*, Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a \$700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.*, San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a \$300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.*, Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a \$585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.*, Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a \$250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC*, San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a \$160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.
- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

EXHIBIT 9



Quotation Request:
Andrew Ward
JCL Law Firm, A.P.C.
award@jcl-lawfirm.com
888.498.6999

Case Name: Epps v. Soapy Joe's Group Inc., et al.
Date: Thursday, February 27, 2025
RFP Number: 16450016

Prepared By:
Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Number of Aggrieved Employees	1,833
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$825.00
Project Management				
Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	2	\$280.00
Sub Total:				\$910.00
Toll-Free Contact Center, Website, Reporting & Pre-Distribution				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$395.00	1	\$395.00
NCOA Address Update (USPS)	Static Rate	\$250.00	1	\$250.00
Certified Language Translation: Spanish	Static Rate	\$750.00	1	\$750.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$1,515.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	3	\$420.00
Print & Mail Distribution Settlement Check (IRS Form 1099 if applicable)	Per Piece	\$0.95	1,833	\$1,741.35
USPS First Class Postage	Per Piece	\$0.69	1,833	\$1,264.77
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	367	\$733.20
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	6	\$600.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Sub Total:				\$6,369.32

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	3	\$405.00
Project Management Reconciliation	Per Hour	\$100.00	3	\$300.00
Declarations	Per Hour	\$120.00	3	\$360.00
Sub Total:				\$1,065.00

DISCOUNTED WILL NOT EXCEED:	\$7,990.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.