

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SOAPY JOE'S GROUP, INC., a California corporation; (See attached)

## ELECTRONICALLY FILED

Superior Court of California,  
County of San Diego

04/12/2022 at 01:23:11 PM

Clerk of the Superior Court  
By Mariejo Guyot, Deputy Clerk

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Courthouse  
330 W Broadway  
San Diego, CA 92101

CASE NUMBER: 37-2022-00013622-CU-0E-CTL  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 04/13/2022  
(Fecha)

Clerk, by M. Guyot, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):



SHORT TITLE:

CASE NUMBER:

Makiya Epps ,et al. v. Soapy Joe's Group, Inc., et al.

**INSTRUCTIONS FOR USE**

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

**List additional parties** (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff    ☒ Defendant    ☐ Cross-Complainant    ☐ Cross-Defendant

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;

Page \_\_\_\_ of \_\_\_\_

Page 1 of 1

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)

Attorneys for Plaintiffs MAKIYA EPPS and TESSIE HALEY

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**04/12/2022** at 01:23:11 PM

Clerk of the Superior Court  
By Mariejo Guyot, Deputy Clerk

**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. 37-2022-00013622-CU-OE-CTL

**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.

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.5<sup>th</sup> 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009  
20 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4<sup>th</sup> 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           34. Each Defendant, whether named or fictitious, exercised control over PLAINTIFFS'  
2 wages, working hours, and/or working conditions.

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

6                                   **JURISDICTION AND VENUE**

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

10          37. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections  
11 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANTS, resides in this  
12 County, and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and  
13 facilities in this County and/or conducts substantial business in this County, and (ii) committed the  
14 wrongful conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

15                                   **THE CONDUCT**

16          38. In violation of the applicable sections of the California Labor Code and the requirements  
17 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company  
18 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally  
19 complaint meal and rest period, failed to accurately compensate PLAINTIFFS and the other members  
20 of the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and  
21 the other AGGRIEVED EMPLOYEES for all time worked, failed to accurately calculate and pay  
22 Plaintiff and other members of the AGGRIEVED EMPLOYEES for overtime worked, meal period  
23 premiums and sick pay, failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for  
24 required business expenses, and failed to issue to PLAINTIFFS and the AGGRIEVED EMPLOYEES  
25 with accurate itemized wage statements showing, among other things, all applicable hourly rates in  
26 effect during the pay periods and the corresponding amount of time worked at each hourly rate.  
27 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and  
28 full payment for all time worked as required by California law which allows DEFENDANTS to

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.

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

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

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

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

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

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

25           74. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the AGGRIEVED  
26 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,  
27 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802 in the  
28 following amounts:

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

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

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

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

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

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

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

1 1199, a civil penalty in the amount of one hundred dollars (\$100) per  
2 AGGRIEVED EMPLOYEE per pay period for the initial violation and two  
3 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period  
4 for each subsequent violation [penalty per Labor Code Section].

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


11 **PRAYER FOR RELIEF**

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

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

18  
19 Dated: April 12, 2022

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


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

**DEMAND FOR JURY TRIAL**

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

Dated: April 12, 2022

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

By:   
Jean-Claude Lapuyade  
Attorneys for PLAINTIFFS



# **EXHIBIT 1**



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](http://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](mailto: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 dark 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)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.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. \_\_\_\_\_

**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.

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.

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.5<sup>th</sup> 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009  
20 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4<sup>th</sup> 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.



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

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

## **JURISDICTION AND VENUE**

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

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

## THE CONDUCT

38. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally complaint meal and rest period, failed to accurately compensate PLAINTIFFS and the other members of the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for all time worked, failed to accurately calculate and pay Plaintiff and other members of the AGGRIEVED EMPLOYEES for overtime worked, meal period premiums and sick pay, failed to reimburse PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses, and failed to issue to PLAINTIFFS and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to



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.



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

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

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

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

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

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

25           74. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the AGGRIEVED  
26 EMPLOYEES are entitled to civil penalties for DEFENDANTS’ violations of Labor Code Section 201,  
27 202, 203, 204, 206.5, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198 & 2802 in the  
28 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

1 **DEMAND FOR JURY TRIAL**

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

3  
4 Dated: January 24, 2022

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

5  
6 By:   
7 Jean-Claude Lapuyade  
8 Attorneys for PLAINTIFFS  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

LORENS Aftisha  
The Plate Law Firm  
1999 Sweetwater Rd.  
National City, CA 91950



9590 9402 7020 1225 2851 36

## 2. Article Number (Transfer from service label)

7021 2720 0000 9972 5498

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

Aftisha

☐ Agent☐ Addressee

## B. Received by (Printed Name)

Aftisha

## C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☒ No

EPPS

1.24.22

## 3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

/s/ Restricted Delivery  
(0)

PS Form 3811, July 2020 PSN 7530-02-000-9053

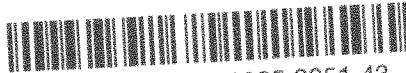
Domestic Return Receipt

# SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SOAPY JOES RANCHO SD, INC. et al.  
 C/o Tara P. Sheena  
 11465 Woodside Dr.  
 La Mesa, CA 91942



9590 9402 7020 1225 2851 43

2. Article Number (Transfer from service label)

7021 2720 0000 9972 5481

PS Form 3811, July 2020 PSN 7530-02-000-9053

# COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

EPDS 1.24.22

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

Mail

Mail Restricted Delivery

(000000)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restrictec Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt