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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RAYMOND PINKSTON, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

THE CHEFS' WAREHOUSE WEST
COAST, LLC, a Delaware limited liability
company; THE CHEFS' WAREHOUSE,
INC., a Delaware corporation; DEL
MONTE CAPITOL MEAT COMPANY,
LLC, a Delaware limited liability company;
QZINA SPECIALITY FOODS, INC., a
Washington corporation; and DOES 1
through 10, inclusive,

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

2020 MAY 11 PM 1:32

CLERK OF THE SUPERIOR COURT

CAROLYN LEMOS
BY _____ DEPUTY

Case No.:

RG20061278

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Raymond Pinkston, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on January 30, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Raymond Pinkston is a resident of Berkeley, in Alameda County,
11 California. Defendants have employed Plaintiff as an hourly paid, non-exempt Order Picker
12 since approximately March 2019 at their location in Union City, California. Plaintiff is
13 currently on disability leave. Prior to his leave, Plaintiff typically worked seven (7) to twelve
14 (12) hours per day, five (5) days per week. Plaintiff’s primary job duties include, without
15 limitation, picking orders for various restaurants, placing orders on pallets, and wrapping
16 orders and preparing orders for shipment.

17 7. THE CHEFS’ WAREHOUSE WEST COAST, LLC was and is, upon
18 information and belief, a Delaware limited liability company, and at all times hereinafter
19 mentioned, an employer whose employees are engaged throughout this county, the State of
20 California, or the various states of the United States of America.

21 8. THE CHEFS’ WAREHOUSE, INC. was and is, upon information and belief, a
22 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
23 are engaged throughout this county, the State of California, or the various states of the United
24 States of America.

25 9. DEL MONTE CAPITOL MEAT COMPANY, LLC was and is, upon
26 information and belief, a Delaware limited liability company, and at all times hereinafter
27 mentioned, an employer whose employees are engaged throughout this county, the State of
28 California, or the various states of the United States of America.

1 10. QZINA SPECIALTY FOODS, INC. was and is, upon information and belief, a
2 Washington corporation, and at all times hereinafter mentioned, an employer whose
3 employees are engaged throughout this county, the State of California, or the various states of
4 the United States of America.

5 11. Plaintiff is unaware of the true names or capacities of the Defendants sued
6 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
7 amend the complaint and serve such fictitiously named Defendants once their names and
8 capacities become known.

9 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
10 were the partners, agents, owners, or managers of THE CHEFS' WAREHOUSE WEST
11 COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE CAPITOL MEAT
12 COMPANY, LLC; and QZINA SPECIALTY FOODS, INC. at all relevant times.

13 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, THE CHEFS'
15 WAREHOUSE WEST COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE
16 CAPITOL MEAT COMPANY, LLC; QZINA SPECIALTY FOODS, INC.; and/or DOES 1
17 through 10 (collectively, "Defendants" or "THE CHEFS' WAREHOUSE"), each acting as the
18 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
19 other co-Defendants and was acting within the course and scope of such agency, employment,
20 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
21 of any and all Defendants were in accordance with, and represent, the official policy of
22 Defendants.

23 14. At all relevant times, Defendants, and each of them, ratified each and every act
24 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all the other Defendants in proximately causing
26 the damages herein alleged.

27 15. Plaintiff is informed and believes, and thereon alleges, that each of said
28 Defendants are in some manner intentionally, negligently, or otherwise responsible for the

1 acts, omissions, occurrences, and transactions alleged herein.

2 16. Under California law, Defendants are jointly and severally liable as employers
3 for the violations alleged herein because they have each exercised sufficient control over the
4 wages, hours, working conditions, and employment status of Plaintiff and other non-party
5 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
6 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
7 of employment, determined their rate of pay, and maintained their employment records.
8 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
9 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
10 common-law employment relationship. As joint employers of Plaintiff and other non-party
11 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
12 available to Plaintiff and other non-party Aggrieved Employees under the law.

13 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
14 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
15 non-party Aggrieved Employees because Defendants have:

- 16 (a) jointly exercised meaningful control over the work performed by
17 Plaintiff and other non-party Aggrieved Employees;
- 18 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
19 Aggrieved Employees’ wages, hours, and working conditions, including
20 the quantity, quality standards, speed, scheduling, and operative details
21 of the tasks performed by Plaintiff and other non-party Aggrieved
22 Employees;
- 23 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
24 perform work which is an integral part of Defendants’ businesses; and
- 25 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
26 Employees as a matter of economic reality in that Plaintiff and other
27 non-party Aggrieved Employees were dependent on Defendants, who
28 shared the power to set the wages of Plaintiff and other non-party

1 Aggrieved Employees and determined their working conditions, and
2 who jointly reaped the benefits from the underpayment of their wages
3 and noncompliance with other statutory provisions governing their
4 employment.

5 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
6 there has existed a unity of interest and ownership between Defendants such that any
7 individuality and separateness between the entities has ceased.

8 19. THE CHEFS' WAREHOUSE WEST COAST, LLC; THE CHEFS'
9 WAREHOUSE, INC.; DEL MONTE CAPITOL MEAT COMPANY, LLC; QZINA
10 SPECIALTY FOODS, INC.; and DOES 1 through 10 are therefore alter egos of each other.

11 20. Adherence to the fiction of the separate existence of Defendants would permit
12 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
13 from liability for the wrongful acts committed by them under the name THE CHEFS'
14 WAREHOUSE.

15 21. Plaintiff further alleges, upon information and belief, that Defendants THE
16 CHEFS' WAREHOUSE WEST COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL
17 MONTE CAPITOL MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS, INC. are
18 alter egos of each other for the following reasons:

- 19 (a) On information and belief, Christopher Pappas serves as the Chief
20 Executive Officer of THE CHEFS' WAREHOUSE WEST COAST,
21 LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE CAPITOL
22 MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS, INC.;
- 23 (b) On information and belief, James Leddy serves as the Chief Financial
24 Officer of THE CHEFS' WAREHOUSE WEST COAST, LLC; THE
25 CHEFS' WAREHOUSE, INC.; DEL MONTE CAPITOL MEAT
26 COMPANY, LLC; and QZINA SPECIALTY FOODS, INC.;
- 27 (c) On information and belief, Alexandros Aldous serves as the Secretary and
28 Chief Financial Officer of THE CHEFS' WAREHOUSE, INC. and

1 QZINA SPECIALTY FOODS, INC.;

2 (d) On information and belief, THE CHEFS' WAREHOUSE WEST
3 COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE
4 CAPITOL MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS,
5 INC. share the same mailing address and entity address of 100 E. Ridge
6 Road, Ridgefield, Connecticut 06877, and THE CHEFS' WAREHOUSE
7 WEST COAST, LLC; THE CHEFS' WAREHOUSE, INC.; and DEL
8 MONTE CAPITOL MEAT COMPANY, LLC have registered this
9 location as their entity and mailing address with the California Secretary
10 of State;

11 (e) On information and belief, THE CHEFS' WAREHOUSE WEST
12 COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE
13 CAPITOL MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS,
14 INC. share the same agent for service of process, CORPORATION
15 SERVICE COMPANY WHICH WILL DO BUSINESS IN
16 CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE;

17 (f) On information and belief, THE CHEFS' WAREHOUSE WEST
18 COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE
19 CAPITOL MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS,
20 INC. utilize the same career website
21 ([https://recruiting.adp.com/srccar/public/RTI.home?c=1124341&d=Exte](https://recruiting.adp.com/srccar/public/RTI.home?c=1124341&d=ExternalCareerSite)
22 [rnalCareerSite](https://recruiting.adp.com/srccar/public/RTI.home?c=1124341&d=ExternalCareerSite)) to attract prospective employees, procure employment
23 information from prospective employees, and process employment
24 applications; and

25 (g) On information and belief, THE CHEFS' WAREHOUSE WEST
26 COAST, LLC; THE CHEFS' WAREHOUSE, INC.; DEL MONTE
27 CAPITOL MEAT COMPANY, LLC; and QZINA SPECIALTY FOODS,
28 INC. utilize the same standardized employment forms and issue the

1 same employment policies.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 22. Defendants are a specialty food distributor delivering ingredients to restaurants
4 and other food preparation vendors in 26 states, including California. In California, Defendants
5 operate approximately nine (9) warehouse/distribution center locations associated with the
6 following brands and subsidiaries: Chefs' Warehouse, Del Monte Meat Company, Qzina, and
7 Ports Seafood. Upon information and belief, Defendants maintain a single, centralized Human
8 Resources ("HR") department at their corporate headquarters in Ridgefield, Connecticut,
9 which is responsible for the recruiting and hiring of new employees, and communicating and
10 implementing Defendants' company-wide policies, including timekeeping policies and meal
11 and rest period policies, to employees throughout California.

12 23. In particular, Plaintiff and other non-party Aggrieved Employees, on
13 information and belief, received the same standardized documents and/or written policies.
14 Upon information and belief, the usage of standardized documents and/or written policies,
15 including new-hire documents, indicate that Defendants dictated policies at the corporate level
16 and implemented them company-wide, regardless of their employees' assigned locations or
17 positions. Upon information and belief, Defendants set forth uniform policies and procedures
18 in several documents provided at an employee's time of hire.

19 24. Upon information and belief, Defendants maintain a centralized Payroll
20 department at their corporate headquarters in Ridgefield, Connecticut, which processes payroll
21 for all non-exempt, hourly paid employees working for Defendants at their various locations
22 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees.
23 Based upon information and belief, Defendants issue the same formatted wage statements to
24 all non-exempt, hourly paid employees in California, irrespective of their work locations.
25 Upon information and belief, Defendants process payroll for departing employees in the same
26 manner throughout the State of California, regardless of the manner in which each employee's
27 employment ends.

28 25. Defendants continue to employ non-exempt or hourly paid employees in

1 California.

2 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
4 and advisors knowledgeable about California labor and wage law, employment and personnel
5 practices, and about the requirements of California law.

6 27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
7 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
8 were not recorded.

9 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive certain wages for overtime compensation and that they were not receiving certain
12 wages for overtime compensation.

13 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive at least minimum wages for compensation and that they were not receiving at least
16 minimum wages for work that was required to be done off-the-clock. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
18 least minimum wages for work done off-the-clock.

19 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that other non-party Aggrieved Employees were entitled to meal periods
21 in accordance with the Labor Code or payment of one (1) additional hour of pay at their
22 regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
23 minute meal periods and that other non-party Aggrieved Employees were not provided with
24 all meal periods or payment of one (1) additional hour of pay at their regular rates of pay
25 when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

26 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment

1 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
2 and permitted to take a compliant rest period. In violation of the California Labor Code,
3 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
4 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
5 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
6 they were not authorized and permitted to take a compliant rest period.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 receive complete and accurate wage statements in accordance with California law. In
10 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
11 were not provided complete and accurate wage statements.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they had a duty to maintain accurate and complete payroll records in
14 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
15 and intentionally failed to do so.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that other non-party Aggrieved Employees were entitled to timely
18 payment of all wages earned upon termination of employment. In violation of the California
19 Labor Code, other non-party Aggrieved Employees did not receive payment of all wages due,
20 including, but not limited to, overtime wages, minimum wages, meal and rest period
21 premiums, and/or all vested vacation pay within permissible time periods within permissible
22 time periods.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 timely payment of wages during their employment. In violation of the California Labor Code,
26 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
27 including, but not limited to, overtime wages, minimum wages, and meal and rest period
28 premiums, within permissible time periods.

1 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
3 and expenses Plaintiff and other non-party Aggrieved Employees incurred obtaining
4 mandatory physical examinations and/or drug tests, but willfully, knowingly, and intentionally
5 failed to do so.

6 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they were required to pay departing employees all vested vacation
8 wages that were owed to them at the end of their employment. In violation of the California
9 Labor Code, Defendants failed to pay other non-party Aggrieved Employees all vested
10 vacation wages at the end of their employment, causing a forfeiture of vested vacation wages.

11 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive reimbursement for all business-related expenses and costs they incurred during the
14 course and scope of their employment and that they did not receive reimbursement of
15 applicable business-related expenses and costs incurred.

16 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that Defendants had a duty to provide
18 other non-party Aggrieved Employees with written notice of the material terms of their
19 employment with Defendants as required by the California Wage Theft Prevention Act, but
20 willfully, knowingly, and intentionally failed to do so.

21 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants knew or should have known that they had a duty to compensate
23 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
24 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
25 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
26 that they were properly denied wages, all in order to increase Defendants' profits.

27 41. At all times herein set forth, PAGA provides that any provision of law under
28 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be

1 assessed and collected by the LWDA for violations of the California Labor Code and
2 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
3 civil action brought on behalf of themselves and other current or former employees pursuant
4 to procedures outlined in California Labor Code section 2699.3.

5 42. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the
7 alleged violations was committed.”

8 43. Plaintiff and other current and former employees of Defendants are “aggrieved
9 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
10 or former employees and one or more of the alleged violations were committed against them.

11 44. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
13 following requirements have been met:

- 14 (a) The aggrieved employee shall give written notice by online filing
15 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
16 to the employer of the specific provisions of the California Labor Code
17 alleged to have been violated, including the facts and theories to support
18 the alleged violations.
- 19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).
- 22 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
23 employer and the aggrieved employee by certified mail that it does not
24 intend to investigate the alleged violation within sixty (60) calendar
25 days of the postmark date of the Employee’s Notice. Upon receipt of
26 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
27 five (65) calendar days of the postmark date of the Employee’s Notice,
28 the aggrieved employee may commence a civil action pursuant to

California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

45. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

46. On January 30, 2020, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned

1 Plaintiff PAGA Case Number LWDA-CM-768500-20. A true and correct copy of Plaintiff's
2 written notice to the LWDA and Defendants dated January 30, 2020, is attached hereto as
3 "Exhibit 1."

4 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff
5 sent the initial LWDA Notice described above, and the LWDA has not responded that it
6 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

7 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3,
10 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

11 49. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
15 dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid" Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
20 as a private attorney general, seeks assessment and collection of civil penalties under Labor
21 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
22 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
23 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
24 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
25 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
26 IWC wage order.

27 50. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth
2 above.

3 51. As set forth below, Defendants have violated numerous provisions of both the
4 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
5 Order.

6 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
7 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
8 private attorney general, seeks assessment and collection of civil penalties for himself, all
9 other non-party Aggrieved Employees, and the State of California against Defendants for
10 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3,
11 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

12 **FIRST CAUSE OF ACTION**

13 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

14 **(Against all Defendants)**

15 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 54. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
19 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
20 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
21 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
22 violations of those Labor Code sections not found in section 2699.5, including sections 516,
23 1182.12, and 2810.5.

24 55. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
27 wage order for Defendants' failure to compensate Plaintiff and other non-
28 party Aggrieved Employees with all required overtime pay, as set forth

below;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code section 222.5 for failing to compensate Plaintiff and other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing, as set forth below;
- (j) Violation of Labor Code section 227.3 for failure to pay other non-party Aggrieved Employees all vested vacation time upon termination as set forth below, as set forth below;

- 1 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other non-party Aggrieved Employees for all business expenses
3 necessarily incurred, as set forth below, as set forth below; and
4 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
5 provide written notice of information material to other non-party
6 Aggrieved Employees' employment with Defendants, as set forth below.

7 **FAILURE TO PAY OVERTIME**

8 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

9 56. Labor Code section 1198 makes it illegal to employ an employee under
10 conditions of labor that are prohibited by the applicable wage order. California Labor Code
11 section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall
12 be the . . . standard conditions of labor for employees. The employment of any employee . . .
13 under conditions of labor prohibited by the order is unlawful."

14 57. California Labor Code section 1198 and the applicable IWC Wage Order
15 provide that it is unlawful to employ persons without compensating them at a rate of pay
16 either time-and-one-half or two-times that person's regular rate of pay, depending on the
17 number of hours worked by the person on a daily or weekly basis.

18 58. Specifically, the applicable IWC Wage Order provides that Defendants are and
19 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
20 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
21 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
22 hours in a workweek.

23 59. The applicable IWC Wage Order further provides that Defendants are and were
24 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
25 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
26 An employee's regular rate of pay includes all remuneration for employment paid to, or on
27 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

28 60. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

6 61. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
8 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
9 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
10 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
11 not recorded.

12 62. First, during the relevant period, Defendants had, and continue to have, a
13 company-wide policy and/or practice of understaffing their locations, including warehouses
14 and distribution centers. At the same time, Defendants engaged in a company-wide practice
15 and/or policy of pressuring Plaintiff and other non-party Aggrieved Employees to complete
16 loading or unloading a certain number, or quota, of pallets per hour. Defendants'
17 understaffing of their warehouses and other locations, along with the pressure Defendants
18 placed on employees to meet hourly quotas, led to a failure to provide Plaintiff and other non-
19 party Aggrieved Employees with adequate meal period coverage. As a result of this lack of
20 meal period coverage, Plaintiff and other non-party Aggrieved Employees had their meal
21 periods interrupted and cut short by work to meet supervisor and customer order demands.
22 For example, after Plaintiff clocked out for his meal period, Defendants management would
23 interrupt Plaintiff regarding any order discrepancies being handled by his team and for
24 information regarding pallet locations. Other non-party Aggrieved Employees also had their
25 meal periods interrupted to attend to customers and respond to supervisor requests. To the
26 extent these hours worked qualified for overtime, Defendants did not pay Plaintiff and other
27 non-party Aggrieved Employees for the time they continued to perform tasks during their
28 meal periods.

63. Second, Defendants had, and continue to have, a company-wide policy and/or practice of discouraging accrual of overtime hours by employees. Because Defendants discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from Defendants' supervisors, Plaintiff and other non-party Aggrieved Employees would complete assigned tasks outside of their scheduled shifts without being compensated for their work. For example, Plaintiff would arrive 5-10 minutes before his scheduled shifts to turn on and prepare his pallet rider for use for the day. Defendants' management conveyed to employees that once they clocked in, they had to be ready to work immediately. Plaintiff also would be required to clock out at the end of his shift but continue to clean up his work area, including returning his pallet rider to the charging station and cleaning up any shrink wrap and debris. At all times, Plaintiff and other non-party Aggrieved Employees remained under Defendants' control even though they were not clocked in. This off-the-clock work could have been recorded by Defendants, but they did not record the additional time spent by employees to avoid the payment of additional wages to Plaintiff and other non-party Aggrieved Employees.

64. Third, Defendants also had a company-wide practice and/or policy of requiring other non-party Aggrieved Employees to carry radios so that other employees and Defendants' management could communicate with them as needed. Defendants knew or should have known that other non-party Aggrieved Employees were being made to communicate with other employees and/or supervisors while clocked out for meal periods in order to meet Defendants' expectations, but failed to compensate them for this off-the-clock work.

65. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working during their meal periods and before and after their scheduled shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages

1 for all of the overtime hours they actually worked.

2 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
3 the balance of overtime compensation as required by California law, violates the provisions of
4 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
5 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
6 2699(a), (f), and (g).

7 **FAILURE TO PAY MINIMUM WAGES**

8 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

9 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
10 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
11 to be paid to employees, and the payment of a wage less than the minimum so fixed is
12 unlawful. Compensable work time is defined by the applicable wage order as "the time
13 during which an employee is subject to the control of an employer, and includes all the time
14 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
15 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

16 68. As set forth above, Defendants' systemic imposition of productivity quotas,
17 along with their company-wide policy and/or practice of understaffing locations and the
18 resultant lack of meal period coverage, prevented Plaintiff and other non-party Aggrieved
19 Employees from taking all uninterrupted meal periods and caused them to perform work
20 during unpaid meal periods. Additionally, Defendants required other non-party Aggrieved
21 Employees to carry radios and respond to radio calls during meal periods, but did not pay
22 them for the time they spent responding to these calls while they were clocked out. Moreover,
23 as stated above, Defendants systematically failed to pay Plaintiff and other non-party
24 Aggrieved Employees for actual hours worked during their meal periods and before and after
25 scheduled shifts because Defendants discouraged employees from accruing overtime hours
26 and thus, these hours were not always correctly recorded.

27 69. Further, during the relevant time period, Defendants maintained and
28 implemented a company-wide policy of requiring all employees to travel to a medical facility

1 on their own time and using their own personal vehicles to undergo mandatory drug testing
2 and/or physical examinations. However, Defendants did not compensate Plaintiff and other
3 non-party Aggrieved Employees for the time they spent traveling to and from the medical
4 facilities or for the time they spent undergoing testing and/or physical examinations. At all
5 times, Defendants were in control of scheduling the date and time for the testing and/or
6 physical examinations, selecting the provider or facility where the testing and/or physical
7 examinations were to take place, and determining the scope of the testing and/or physical
8 examinations. Defendants gave Plaintiff and other non-party Aggrieved Employees strict
9 instructions to obtain a drug test and physical examination, and Plaintiff and other non-party
10 Aggrieved Employees underwent the testing and examination for the sole benefit of
11 Defendants.

12 70. For example, Defendants selected the date and time for Plaintiff's drug test to
13 take place and instructed Plaintiff to travel to Concentra in Union City, California, to undergo
14 drug testing. Plaintiff followed Defendants' instructions and travelled approximately 50 miles
15 roundtrip to and from Defendants' designated medical testing facility, which took
16 approximately one (1) hour and 30 minutes. Then, Plaintiff spent approximately 2.5 hours
17 waiting at the facility, and another 15 minutes undergoing the requisite testing. However,
18 Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the
19 time they spent traveling to and undergoing the mandatory drug testing and/or physical
20 examinations.

21 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
22 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
23 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
24 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
25 1194, 1197, and 1198.

26 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
27 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

1 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

4 73. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
5 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
6 non-party Aggrieved Employees' employment by Defendants.

7 74. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
14 2012).

15 75. At all relevant times herein set forth, California Labor Code sections 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
19 and the applicable IWC Wage Order also require employers to provide a second meal period
20 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
21 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
22 total hours worked is no more than twelve (12) hours, the second meal period may be waived
23 by mutual consent of the employer and the employee only if the first meal period was not
24 waived.

25 77. As set forth above, during the relevant time period, Defendants had, and
26 continue to have, a company-wide policy and/or practice of understaffing their locations,
27 including warehouse and distribution centers, which resulted in a lack of meal period coverage
28 and impeded Plaintiff and other non-party Aggrieved Employees from taking all timely,

1 uninterrupted meal periods to which they were entitled. Plaintiff and other non-party
2 Aggrieved Employees had their meal periods cut short or interrupted to return to work and/or
3 waited extended periods of time before taking meal periods in order to address issues with
4 orders or respond to supervisors' questions relating to orders. Sometimes, Plaintiff missed his
5 meal periods altogether to handle rush orders.

6 78. Second, Defendants closely monitored and timed employee productivity,
7 placing extreme pressure on employees to meet productivity quotas, such as completing
8 loading and unloading a certain number of pallets per hour. Defendants' implementation of
9 productivity quotas impeded and discouraged employees from taking all uninterrupted 30-
10 minute meal periods because they felt compelled to continue to work during meal periods for
11 fear of not meeting Defendants' productivity standards. For the same reasons, Plaintiff and
12 other non-party Aggrieved Employees were not always provided timely meal periods. For
13 example, Plaintiff often was not provided with a first meal period until after midnight and
14 after he had already worked five (5) consecutive hours of his shift.

15 79. Third, as stated, Defendants had a company-wide policy and/or practice of
16 requiring other non-party Aggrieved Employees carry radios on their persons so that other
17 employees and management could communicate with them. As a result of Defendants' policy
18 and/or practice that employees carry and respond to radios at all times, other non-party
19 Aggrieved Employees were compelled to perform work-related duties during their unpaid
20 meal periods.

21 80. Fourth, Defendants did not schedule second meal periods and had no policy for
22 permitting Plaintiff and other non-party Aggrieved Employees to take second 30-minute meal
23 periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other
24 non-party Aggrieved Employees did not receive second 30-minute meal periods on days that
25 they worked in excess of ten (10) hours in one day. For example, when Plaintiff worked in
26 excess of ten (10) hours in a day, Defendants did not schedule him to take a second meal
27 period and did not provide him with the opportunity to take a second meal period. Instead,
28 Plaintiff continued to work until he clocked out for the day. Plaintiff and other non-party

1 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
2 to meal periods and were not relieved of all duties.

3 81. Moreover, Defendants had a company-wide policy of requiring all newly hired
4 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
5 the position that non-exempt, hourly paid employees had waived their rights to first and
6 second meal periods for the entirety of their employment and on that basis did not provide
7 them with all meal periods to which they were entitled. Specifically, Defendants' "First Meal
8 Period Waiver" and "Second Meal Period Waiver" forms provide that the waivers remain in
9 effect until the employee provides one day's advance warning in writing of his or her decision
10 to revoke: "I also understand that I may revoke this waiver at any time by providing **at least one**
11 **day's advance written notice to my supervisor**. This waiver will remain in effect until I
12 revoke it." (Emphasis added)

13 82. Defendants' company-wide use of blanket meal period waivers signed at or
14 near the time of hire and imposition of the burden on employees to revoke the waivers *in*
15 *writing*, discouraged and impeded Plaintiff and other non-party Aggrieved Employees from
16 taking all meal periods to which they were entitled. And, Defendants' presumption that
17 second meal periods would not be provided for shifts in excess of ten (10) hours but less than
18 twelve (12) hours due to blanket second meal period waivers discouraged and prevented
19 Plaintiff and other non-party Aggrieved Employees from taking second meal periods.

20 83. What's more, an employer's obligation to provide a meal period is only
21 "triggered" when the employer "employs an employee for a work period of more than five
22 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
23 anyone to work for a full five hours, its meal break obligation is triggered."). "[A]fter the
24 meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-
25 duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end
26 the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit.
27 Failure to do one of these will render the employer liable for premium pay." *Id.* (citing Cal.
28 Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

1 84. Further, under Labor Code section 512(a) and the applicable IWC Wage Order,
2 employees may waive their second meal periods only if they took their first meal period.
3 Defendants' meal period waivers are facially invalid insofar as they fail to state that the
4 second meal period can only be waived if the first meal period is provided. That Defendants
5 require Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
6 simultaneously at or near their time of hire (as opposed to on a specific work day) also renders
7 them invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other
8 non-party Aggrieved Employees with meal periods did not arise until they had employed them
9 for a full five (5) hours. Thus, Plaintiff and other non-party Aggrieved Employees did not
10 sign valid meal period waivers on days that they were entitled to meal periods but were not
11 relieved of all duties.

12 85. Defendants knew or should have known that as a result of its policies, Plaintiff
13 and other non-party Aggrieved Employees were not actually relieved of all duties to take
14 timely, uninterrupted meal periods. Defendants further knew or should have known that they
15 did not pay Plaintiff and other non-party Aggrieved Employees meal period premium wages
16 when meal periods were missed, late, short, and/or interrupted. As a result, Plaintiff and other
17 non-party Aggrieved Employees had to work through part or all of their meal periods, have
18 their meal periods interrupted, and/or wait extended periods of time before taking meal
19 periods.

20 86. Defendants also have engaged in a company-wide practice and/or policy of not
21 paying meal period premiums owed when compliant meal periods are not provided. Because
22 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
23 received premium pay for missed meal periods.

24 87. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
25 Employees compliant meal periods and failed to pay the full meal period premiums due.
26 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
27 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
28 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and

1 (g).

2 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

4 88. At all relevant times herein set forth, the applicable IWC Wage Order and
5 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
6 non-party Aggrieved Employees' employment by Defendants.

7 89. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3½) hours.

13 90. At all relevant times, California Labor Code section 226.7 provides that no
14 employer shall require an employee to work during any rest period mandated by an applicable
15 order of the California IWC. To comply with its obligation to authorize and permit rest
16 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
17 employer must "relinquish any control over how employees spend their break time, and
18 relieve their employees of all duties—including the obligation that an employee remain on
19 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
20 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

21 91. Pursuant to the applicable IWC Wage Order and California Labor Code section
22 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
23 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
24 required rest period was not authorized and permitted.

25 92. During the relevant time period, Defendants regularly failed to authorize and
26 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
27 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
28 Defendants' company-wide policy and practice of understaffing while simultaneously

1 pressuring employees to meet hourly productivity quotas, prevented Plaintiff and other non-
2 party Aggrieved Employees from being relieved of all duty to take compliant rest periods.
3 Moreover, Defendants' policy and/or practice of requiring other non-party Aggrieved
4 Employees to carry radios and respond to radio calls also prevented other non-party
5 Aggrieved Employees from being relieved of all duty to take compliant rest periods.

6 93. Also, Defendants' imposition of productivity quotas on employees further
7 discouraged employees from taking uninterrupted rest periods and caused them to suffer
8 interruptions during rest periods. Furthermore, Defendants had no policy of scheduling rest
9 periods for employees, which further impeded Plaintiff and other non-party Aggrieved
10 Employees from taking compliant rest periods.

11 94. Furthermore, Defendants maintained and implemented a company-wide
12 practice and/or policy requiring that Plaintiff and other non-party Aggrieved Employees
13 remain on premises during their rest breaks. Because Plaintiff and other non-party Aggrieved
14 Employees were restricted from leaving the premises during rest periods, they were denied the
15 ability to use their rest periods freely for their own purposes. Thus, Defendants effectively
16 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
17 periods, and, as a result of this rest period policy, Defendants did not relinquish control over
18 Plaintiff and other non-party Aggrieved Employees during rest periods.

19 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
20 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
21 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
22 entitled. For example, Plaintiff typically missed one (1) to three (3) rest periods in a
23 workweek due to his workload and Defendants' productivity demands. Defendants'
24 management also regularly interrupted Plaintiff's and other non-party Aggrieved Employees'
25 rest periods to ask them for updates and information regarding customer orders.

26 96. Defendants also have engaged in a company-wide practice and/or policy of not
27 paying all rest period premiums owed when compliant rest periods are not authorized or
28 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved

1 Employees have not received premium pay for all missed rest periods.

2 97. Defendants' conduct violates the applicable IWC Wage Order and California
3 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
4 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
5 2699(a), (f), and (g).

6 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
7 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

8 98. At all relevant times herein, California Labor Code section 226(a) provides that
9 every employer shall furnish each of his or her employees an accurate and complete itemized
10 wage statement in writing, including, but not limited to, the name and address of the legal entity
11 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
12 rates of pay.

13 99. During the relevant time period, Defendants have knowingly and intentionally
14 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
15 inaccurate wage statements. For example, Defendants issued uniform wage statements to
16 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
17 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the
18 pay period, including overtime rates of pay, and the corresponding number of hours worked at
19 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and
20 226(a)(9).

21 100. Because Defendants did not record the time Plaintiff and other non-party
22 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
23 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
24 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
25 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
26 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
27 in effect during the pay period and corresponding accurate number of work hours worked at
28 each hourly rate in violation of section 226(a)(9). Defendants also knowingly and intentionally

1 provided other non-party Aggrieved Employees who are former employees with final wage
2 statements that failed to accurately list the amount of vested vacation wages that were owed.

3 101. The wage statement deficiencies also include, without limitation, failing to list
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
5 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
6 only the last four digits of his or her social security number or an employee identification
7 number other than a social security number; failing to list the name and address of the legal
8 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
9 employees were paid; and/or failing to state all hours worked as a result of not recording or
10 stating hours worked off-the-clock.

11 102. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
13 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
14 employment of any employees for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
16 Wage Order, employers are required to keep accurate time records showing when the
17 employee begins and ends each work period and meal period. During the relevant time
18 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
19 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
20 in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff
21 and other non-party Aggrieved Employees with second 30-minute meal periods to which they
22 were entitled, Defendants kept no records of meal start and end times for second meal periods.

23 103. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
2 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
3 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
4 as a result of failing to record the off-the-clock hours that they worked.

5 104. Because Defendants’ violations of 226(a) and 1174(d) were committed against
6 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
7 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5,
8 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 105. At all relevant times herein set forth, California Labor Code section 204
12 requires that all wages earned by any person in any employment between the 1st and the 15th
13 days, inclusive, of any calendar month, other than those wages due upon termination of an
14 employee, are due and payable between the 16th and the 26th day of the month during which
15 the labor was performed. Labor Code section 204 further provides that all wages earned by
16 any person in any employment between the 16th and the last day, inclusive, of any calendar
17 month, other than those wages due upon termination of an employee, are due and payable
18 between the 1st and the 10th day of the following month.

19 106. At all relevant times herein, California Labor Code section 204 also requires
20 that all wages earned for labor in excess of the normal work period shall be paid no later than
21 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
22 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
23 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven (7) calendar days following the close of the payroll period.

25 107. During the relevant time period, Defendants willfully failed to pay Plaintiff and
26 other non-party Aggrieved Employees all wages due to them within any time period specified
27 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
28 wages, and/or meal and rest period premium wages.

108. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

109. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

110. Defendants willfully failed to pay other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

111. Defendants' failure to pay those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates Labor Code sections 201 and 202. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION

VIOLATION OF LABOR CODE SECTION 222.5

112. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

113. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved

1 Employees undergo mandatory drug tests and/or physical examinations, but required them to
2 do so at their own expense. As stated, Defendants had a company-wide policy requiring that
3 all employees, including Plaintiff and other non-party Aggrieved Employees, travel to a
4 specified medical facility on their own time and use their own means of transportation to
5 undergo drug testing and/or physical examinations. At all times, Defendants was in control of
6 scheduling the date and time for the drug testing and/or physical examinations, selecting the
7 provider/facility where the drug testing and/or physical examinations were to take place, and
8 determining the scope of the drug test and/or physical examinations.

9 114. For example, Plaintiff was instructed by Defendants to travel to Concentra, a
10 medical facility, in Union City and obtain a drug test and physical examination. Plaintiff
11 followed Defendants' instructions, traveled to the facility Defendants selected, and underwent
12 the testing and examination. Plaintiff was required to travel to and from a facility selected by
13 Defendants using his own vehicle. Once at the facility, Plaintiff spent 2.5 hours waiting for
14 and undergoing drug testing, and another 45-60 minutes traveling to and from the medical
15 facility. Other non-party Aggrieved Employees similarly were required to travel in their own
16 vehicles to medical facilities selected by Defendants and undergo drug testing and/or physical
17 examinations.

18 115. However, Defendants did not compensate Plaintiff and other non-party
19 Aggrieved Employees for the time they spent traveling to and from their drug tests and/or
20 physical examinations, or for the time they spent undergoing the testing and/or examinations,
21 or reimburse them for the travel expenses they incurred getting to and from the medical
22 facilities. Defendants' policy and/or practice of not paying for all costs Plaintiff and other
23 non-party Aggrieved Employees incurred obtaining mandatory drug tests and physical
24 examinations tests is in violation of California Labor Code section 222.5.

25 116. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
26 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

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1 **FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF UPON**
2 **TERMINATION**

3 **VIOLATION OF LABOR CODE SECTION 227.3**

4 117. At all relevant times herein, California Labor Code section 227.3 provides that
5 whenever a contract of employment or employer policy provides for paid vacations, and an
6 employee is terminated without having taken his or her vested vacation time, all vested
7 vacation shall be paid to him or her as wages at his or her final rate in accordance with such
8 contract of employment or employer policy respecting eligibility or time served.

9 118. During the relevant time period, Defendants had a uniform, company-wide
10 policy and/or practice of failing to immediately pay employees vested vacation wages that
11 were owed to them at the end of their employment, including all vested vacation wages that
12 accrued during employees' final week of employment. Rather, Defendants only paid other
13 non-party Aggrieved Employees their unused and vested vacation wages through their second
14 to last pay period worked. As an example, Defendants paid out another aggrieved employee
15 only 6.90 hours of his total 7.67 hours of unused vested vacation pay due. Defendants failed
16 to pay the aggrieved employee the remaining 0.77 hours balance due that accrued and vested
17 in the aggrieved employee's final week of employment.

18 119. Defendants' uniform policy of failing to pay other non-party Aggrieved
19 Employees all vested vacation wages at the end of their employment caused a forfeiture of
20 vested vacation wages in violation of California Labor Code section 227.3.

21 120. Other non-party Aggrieved Employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code section 2699(a), (f), and (g).

23 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

24 **VIOLATION OF LABOR CODE SECTION 2802**

25 121. At all times herein set forth, California Labor Code section 2802 provides that
26 an employer must reimburse employees for all necessary expenditures and losses incurred by
27 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
28 to prevent employers from passing off their cost of doing business and operating expenses on

1 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
2 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen the
3 employer requires the use of tools or equipment or they are necessary to the performance of a
4 job, such tools and equipment shall be provided and maintained by the employer, except that
5 an employee whose wages are at least two (2) times the minimum wage may provide and
6 maintain hand tools and equipment customarily required by the particular trade or craft."

7 122. First, during the relevant time period, as stated, Defendants had a company-
8 wide policy of requiring Plaintiff and other non-party Aggrieved Employees to travel in their
9 own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical
10 examinations, but did not reimburse them for their travel expenses, including mileage. For
11 example, as described above, Plaintiff drove his personal vehicle approximately 50 miles
12 roundtrip to undergo drug testing per Defendants' instructions, but was not reimbursed for his
13 mileage to and from the medical facility. Although Defendants required Plaintiff and other
14 non-party Aggrieved Employees to undergo drug testing and/or physical examinations,
15 Defendants failed to reimburse them for these expenses.

16 123. Second, during the relevant time period, Defendants, on a company-wide basis,
17 required that other non-party Aggrieved Employees utilize their own personal cellular phones
18 and/or cellular phone data to carry out their job duties, but failed to reimburse them for the
19 costs of their cellular phone and/or data plans. For example, other non-party Aggrieved
20 Employees were required to use their personal cellular phones to perform their work, such as
21 calling FedEx and UPS to discuss order pick-ups and deliveries. Although Defendants
22 required other non-party Aggrieved Employees to regularly utilize their personal cellular
23 phones to carry out work-related responsibilities, Defendants failed to reimburse them for this
24 cost.

25 124. Defendants could have provided Plaintiff and other non-party Aggrieved
26 Employees with the actual tools for use on the job, including company phones and company
27 vehicles, or could have reimbursed employees for the costs of their cellular phone usage,
28 mileage, and travel expenses, but instead, Defendants passed these operating costs off onto

1 Plaintiff and other non-party Aggrieved Employees. Thus, Defendants had, and continue to
2 have, a company-wide policy and/or practice of not reimbursing employees for expenses
3 necessarily incurred. At all relevant times, Plaintiff did not earn at least two (2) times the
4 minimum wage.

5 125. Defendants' company-wide policy and/or practice of passing on their operating
6 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
7 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
10 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

11 126. California's Wage Theft Prevention Act was enacted to ensure that employers
12 provide employees with basic information material to their employment relationship at the
13 time of hiring, and to ensure that employees are given written and timely notice of any
14 changes to basic information material to their employment. Codified at California Labor
15 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
16 employer must provide written notice to employees containing basic and material payroll
17 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
18 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
19 overtime, the regular payday designated by the employer, and any allowances claims as part
20 of the minimum wage, including meal or lodging allowances. Labor Code section
21 2810.5(a)(1)(A)-(C).

22 127. During the relevant time period, Defendants failed to provide other non-party
23 Aggrieved Employees with written notice that lists all the requisite information set forth in
24 Labor Code section 2810.5(a)(1)(A)-(C).

25 128. Defendants' failure to provide other non-party Aggrieved Employees with
26 written notice of basic information regarding their employment with Defendants are in
27 violation of Labor Code section 2810.5. Other non-party Aggrieved Employees are therefore
28 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

8 **As to the First Cause of Action**

9 2. That the Court declare, adjudge and decree that Defendants violated the
10 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
11 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
12 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
13 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
14 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
15 statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all
16 earned wages upon termination); 204 (by failing timely to pay all earned wages during
17 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
18 examinations); 227.3 (by failing to pay all vested vacation days upon termination); 2802 (by
19 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of
20 information material to employment).

21 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
22 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
23 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
24 2802, and 2810.5;

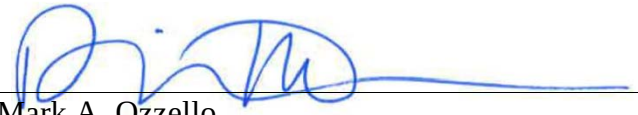
25 4. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516,
28 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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- 5. For pre-judgment and post-judgment interest as provided by law; and
- 6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: May 11, 2020

Respectfully submitted,
Capstone Law APC

By: 
Mark A. Ozzello
Brandon K. Brouillette
Brooke W. Waldrop

Attorneys for Plaintiff Raymond Pinkston

EXHIBIT 1

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Greene@capstonelawyers.com

January 30, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/260>)

Subject: *Raymond Pinkston v. The Chefs' Warehouse West Coast, LLC, et al.*

Dear PAGA Administrator:

This office represents Raymond Pinkston in connection with his claims under the California Labor Code. Mr. Pinkston is an employee of THE CHEFS' WAREHOUSE WEST COAST, LLC; THE CHEF'S WAREHOUSE, INC.; DEL MONTE CAPITOL MEAT COMPANY, LLC; QZINA SPECIALITY FOODS, INC.; and/or QZINA SPECIALTY FOODS (AMBASSADOR), INC. (collectively, "CHEFS").

The employers may be contacted directly at the addresses below:

THE CHEFS' WAREHOUSE WEST COAST, LLC
100 EAST RIDGE ROAD
RIDGEFIELD, CT 06877

THE CHEFS' WAREHOUSE, INC.
100 EAST RIDGE ROAD
RIDGEFIELD, CT 06877

DEL MONTE CAPITOL MEAT COMPANY, LLC
100 EAST RIDGE ROAD
RIDGEFIELD, CT 06877

QZINA SPECIALITY FOODS, INC.
1670 ROLLINS ROAD
BURLINGAME, CA 94101

QZINA SPECIALTY FOODS (AMBASSADOR), INC.
100 EAST RIDGE ROAD
RIDGEFIELD, CT 06877

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Green@capstonelawyers.com

QZINA SPECIALITY FOODS, INC.
100 EAST RIDGE ROAD
RIDGEFIELD, CT 06877

Mr. Pinkston intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Pinkston seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CHEFS in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CHEFS has employed Mr. Pinkston as a non-exempt, hourly paid Order Picker since approximately March 2019. Mr. Pinkston works for CHEFS out of its location in Union City, California. Mr. Pinkston is currently on disability leave. Prior to his leave, Mr. Pinkston typically worked seven (7) to twelve (12) hours per day, five (5) days per week. Mr. Pinkston's primary job duties include, without limitation, picking orders for various restaurants, placing orders on pallets, and wrapping orders and preparing orders for shipment.

CHEFS has committed one or more of the following Labor Code violations against Mr. Pinkston, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

CHEFS' Company-Wide and Uniform Payroll and HR Practices

CHEFS is a specialty food distributor delivering ingredients to restaurants and other food preparation vendors in 26 states, including California. In California, CHEFS operates approximately nine (9) warehouse/distribution center locations associated with the following brands and subsidiaries: Chefs' Warehouse, Del Monte Meat Company, Qzina, and Ports Seafood. CHEFS' WAREHOUSE WEST COAST, LLC, THE and DEL MONTE CAPITOL MEAT COMPANY, LLC are Delaware limited liability companies, and THE CHEFS' WAREHOUSE, INC. is a Delaware corporation. All have

¹ These facts, theories, and claims are based on Mr. Pinkston's experience and counsel's review of those records currently available relating to Mr. Pinkston's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Pinkston reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

their principal place of business located in Ridgefield, Connecticut. QZINA SPECIALITY FOODS, INC. is a Washington state corporation with its principal place of business in California, and QZINA SPECIALTY FOODS (AMBASSADOR), INC. is a California corporation. Both QZINA SPECIALITY FOODS, INC. and QZINA SPECIALTY FOODS (AMBASSADOR), INC. list the same executive officer located at the same principal place of business in Ridgefield, Connecticut for CHEFS' WAREHOUSE WEST COAST, LLC, THE; THE CHEFS' WAREHOUSE, INC.; and DEL MONTE CAPITOL MEAL COMPANY, LLC. Upon information and belief, CHEFS maintains a centralized Human Resources (HR) department at their corporate headquarters in Ridgefield, Connecticut, for all non-exempt, hourly paid employees working for CHEFS in California, including Mr. Pinkston and other aggrieved employees. At all relevant times, CHEFS issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Pinkston and other aggrieved employees, regardless of their location or position.

Upon information and belief, CHEFS maintains a centralized Payroll department at their corporate headquarters in Ridgefield, Connecticut, which processes payroll for all non-exempt, hourly paid employees working for CHEFS in California, including Mr. Pinkston and other aggrieved employees. Further, CHEFS issues the same uniform and formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their location, position, or manner in which each employee's employment ended. CHEFS' centralized Payroll department processed payroll for non-exempt, hourly paid employees in the same manner throughout California. In other words, CHEFS utilized the same methods and formulas when calculating wages due to Mr. Pinkston and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CHEFS willfully failed to pay all overtime wages owed to Mr. Pinkston and other aggrieved employees. During the relevant time period, Mr. Pinkston and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, CHEFS had, and continues to have, a company-wide policy of understaffing their locations, including warehouses and distribution centers. At the same time, CHEFS engaged in a company-wide practice and/or policy of pressuring Mr. Pinkston and other aggrieved employees to complete loading or unloading a certain number, or quota, of pallets per hour. CHEFS' understaffing of its warehouses and other locations, along with the pressure CHEFS placed on employees to meet hourly quotas, led to a failure to provide Mr. Pinkston and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr.

Pinkston and other aggrieved employees had their meal periods interrupted and cut short by work to meet supervisor and customer order demands. For example, after Mr. Pinkston clocked out for his meal period, CHEFS management would interrupt Mr. Pinkston regarding any order discrepancies being handled by his team and for information regarding pallet locations. Other aggrieved employees also had their meal periods interrupted to attend to customers and respond to supervisor requests. To the extent these hours worked qualified for overtime, CHEFS did not pay Mr. Pinkston and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Second, CHEFS has, and continues to have, a company-wide policy and/or practice of discouraging accrual of overtime hours by employees. Because CHEFS discouraged overtime accrual by, among other things, requiring employees to obtain pre-approval of overtime hours from CHEFS' supervisors, Mr. Pinkston and other aggrieved employees would complete assigned tasks outside of their scheduled shifts without being compensated for their work. For example, Mr. Pinkston would arrive 5-10 minutes before his scheduled shifts to turn on and prepare his pallet rider for use for the day. CHEFS' management conveyed to employees that once they clocked in, they had to be ready to work immediately. Mr. Pinkston also would be required to clock out at the end of his shift but continue to clean up his work area, including returning his pallet rider to the charging station and cleaning up any shrink wrap and debris. At all times, Mr. Pinkston and other aggrieved employees remained under CHEFS' control even though they were not clocked in. This off-the-clock work could have been recorded by CHEFS, but they did not record the additional time spent by employees to avoid the payment of additional wages to Mr. Pinkston and other aggrieved employees.

Third, CHEFS also had a company-wide practice and/or policy of requiring employees, including other aggrieved employees, to carry radios so that other employees and management could communicate with them as needed. CHEFS knew or should have known that other aggrieved employees were being made to communicate with other employees and/or supervisors while clocked out for meal periods in order to meet CHEFS' expectations, but failed to compensate them for this off-the-clock work.

CHEFS knew or should have known that as a result of these company-wide practices, Mr. Pinkston and other aggrieved employees were working during meal periods and before and after their scheduled shifts, and were suffered or permitted to perform work for which they were not paid. CHEFS also knew, or should have known, that it did not compensate Mr. Pinkston and other aggrieved employees for this off-the-clock work. Because Mr. Pinkston and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, twelve (12) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Pinkston and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. CHEFS' failure to pay Mr. Pinkston and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, CHEFS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CHEFS paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CHEFS failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved

employees worked overtime and received these other forms of pay, CHEFS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Pinkston and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

CHEFS' systemic imposition of productivity quotas, along with their company-wide policy and/or practice of understaffing locations and the resultant lack of meal period coverage, prevented Mr. Pinkston and other aggrieved employees from taking all uninterrupted meal periods and caused them to perform work during unpaid meal periods. Additionally, CHEFS required other aggrieved employees to carry radios and respond to radio calls during meal periods, but did not pay them for the time they spent responding to calls on their radios while they were clocked out. Moreover, as stated above, CHEFS systematically failed to pay Mr. Pinkston and other aggrieved employees for actual hours worked during their meal periods and before and after scheduled shifts because CHEFS discouraged employees from accruing overtime hours and thus, these hours were not always correctly recorded.

Furthermore, CHEFS maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, CHEFS was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, CHEFS gave Mr. Pinkston strict instructions to undergo drug testing, and Mr. Pinkston underwent the testing for the sole benefit of CHEFS. CHEFS selected the date and time for Mr. Pinkston's drug test to take place and instructed Mr. Pinkston to travel to Concentra in Union, City California to undergo drug testing. Mr. Pinkston followed CHEFS' instructions and travelled approximately 50 miles roundtrip to and from CHEFS' designated medical testing facility, which took approximately one (1) hour and 30 minutes. Mr. Pinkston spent approximately 2.5 hours waiting at the facility, and another 15 minutes undergoing the requisite testing. However, CHEFS did not compensate Mr. Pinkston and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, CHEFS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CHEFS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CHEFS regularly failed to pay at least minimum wages to Mr. Pinkston and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Pinkston and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, CHEFS has, and continues to have, a company-wide policy and/or practice of understaffing their locations, including warehouse and distribution centers, which resulted in a lack of meal period coverage and impeded Mr. Pinkston and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Mr. Pinkston and other aggrieved employees had their meal periods cut short or interrupted to return to work and/or waited extended periods of time before taking meal periods in order to address issues with orders or respond to supervisors' questions relating to orders. Sometimes, Mr. Pinkston missed his meal periods altogether to handle rush orders.

Second, CHEFS closely monitored and timed employee productivity, placed extreme pressure on employees to meet productivity quotas, such as completing loading and unloading a certain number quota of pallets per hour. CHEFS' productivity quotas impeded and discouraged employees from taking all uninterrupted 30-minute meal periods because they felt compelled to continue to work during meal periods for fear of not meeting CHEFS' productivity standards. For the same reasons, Mr. Pinkston and other aggrieved employees were not always provided timely meal periods. For example, Mr. Pinkston often was not provided with a first meal period until after midnight and after he had already worked five (5) consecutive hours of his shift.

Third, as stated, CHEFS had a company-wide policy and/or practice of requiring other aggrieved employees carry radios on their persons so that other employees and management could communicate with them. As a result of CHEFS' policy and/or practice that employees carry and respond to radios

at all times, other aggrieved employees were compelled to perform work-related duties during their unpaid meal periods.

Fourth, CHEFS did not schedule second meal periods and had no policy for permitting Mr. Pinkston and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Pinkston and other aggrieved employees did not receive second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, when Mr. Pinkston worked in excess of ten (10) hours in a day, CHEFS did not schedule him to take a second meal period and did not provide him with the opportunity to take a second meal period. Instead, Mr. Pinkston continued to work until he clocked out for the day. Mr. Pinkston and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, CHEFS had a company-wide policy of requiring all newly-hired employees to sign blanket meal period waivers at or near their time of hire. CHEFS took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and on that basis did not provide them with all meal periods to which they were entitled. Specifically, CHEFS' "First Meal Period Waiver" and "Second Meal Period Waiver" forms provide that the waivers remain in effect until the employee provides one day's advance warning in writing of his or her decision to revoke. *Excerpt below:*

"I also understand that I may revoke this waiver at any time by providing at least one day's advance written notice to my supervisor. This waiver will remain in effect until I revoke it."

CHEFS' company-wide use of blanket meal period waivers signed at or near the time of hire and imposition of the burden on employees to revoke the waivers in writing, discouraged and impeded Mr. Pinkston and other aggrieved employees from taking all meal periods to which they were entitled. And, CHEFS' presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket second meal period waivers discouraged Mr. Pinkston and other aggrieved employees from taking second meal periods.

What's more, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. CHEFS' meal period waivers are facially invalid insofar as they fail to state that the second meal period can only be waived if the first meal period is provided. And, the fact that CHEFS requires aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific

work day) renders them invalid and unenforceable, because CHEFS' obligation to provide Mr. Pinkston and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

CHEFS knew or should have known that as a result of its policies, Mr. Pinkston and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CHEFS further knew or should have known that they did not pay Mr. Pinkston and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Pinkston and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted to return to work, and/or waited extended periods of time before taking meal periods.

CHEFS also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Pinkston and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that CHEFS did pay meal rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CHEFS did not properly calculate other aggrieved employees' regular rates of pay by including all compensation, such as shift differential pay, nondiscretionary bonuses, and/or incentive pay, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, CHEFS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Pinkston and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

As with meal periods, CHEFS' company-wide policy and practice of understaffing while simultaneously pressuring employees to meet hourly productivity quotas, prevented Mr. Pinkston and other aggrieved employees from being relieved of all duty to take compliant rest periods. Moreover, CHEFS' policy and/or practice of requiring other aggrieved employees to carry radios and respond to radio calls also prevented other aggrieved employees from being relieved of all duty to take

compliant rest periods. Also, CHEFS' imposition of productivity quotas on employees further discouraged employees from taking uninterrupted rest periods and caused them to suffer interruptions during rest periods. Furthermore, CHEFS had no policy of scheduling rest periods for employees, which further impeded Mr. Pinkston and other aggrieved employees from taking compliant rest periods. As a result, Mr. Pinkston and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of six (6) hours, and/or in excess of ten (10) hours without receiving all uninterrupted ten (10) minute rest periods to which they were entitled.

For example, Mr. Pinkston typically missed one (1) to three (3) rest periods in a workweek due to his workload and CHEFS' productivity demands. CHEFS' management also regularly interrupted Mr. Pinkston's and other aggrieved employees' rest periods to ask them for updates and information regarding customer orders.

Additionally, CHEFS maintained and implemented a company-wide practice and/or policy requiring that aggrieved employees remain on premises during their rest periods. Because aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, CHEFS effectively maintained control over aggrieved employees during rest periods, and, as a result of this rest period policy, CHEFS did not relinquish control over aggrieved employees during rest periods.

CHEFS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Pinkston and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CHEFS did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because CHEFS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as shift differential pay, nondiscretionary bonuses, and/or incentive pay, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, CHEFS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Pinkston and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CHEFS has not provided Mr. Pinkston and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CHEFS has knowingly and intentionally provided Mr. Pinkston and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CHEFS issued uniform wage statements to Mr. Pinkston and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CHEFS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because CHEFS did not record the time Mr. Pinkston and other aggrieved employees spent working off-the-clock, CHEFS did not list the correct amount of gross wages and net wages earned by Mr. Pinkston and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, CHEFS failed to accurately list the total number of the hours worked by Mr. Pinkston and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because CHEFS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, CHEFS did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1). For the same reason, CHEFS failed to list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). CHEFS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the correct name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CHEFS willfully failed to maintain accurate payroll records for Mr. Pinkston and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the

relevant time period, CHEFS failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Pinkston and other aggrieved employees, in violation of section 1198. Furthermore, in light of CHEFS' failure to provide Mr. Pinkston and other aggrieved employees with second 30-minute meal periods to which they were entitled, CHEFS kept no records of meal start and end times for second meal periods.

Because CHEFS failed to provide the accurate number of total hours worked on wage statements, Mr. Pinkston and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Pinkston and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Pinkston and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CHEFS failed to pay Mr. Pinkston and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Pinkston and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

CHEFS willfully and improperly paid other aggrieved employees their unused and vested vacation wages through their second to last pay period worked, instead of through their last pay period worked. As a result, CHEFS failed to pay out employees the full balance of accrued unused vacation pay owed to departing employees. For example, CHEFS paid out another aggrieved employee only 6.90 hours of his total 7.67 hours of unused vested vacation pay and failed to pay the aggrieved employee the remaining 0.77 hours balance due, in violation of the Labor Code.

CHEFS also willfully failed to pay other aggrieved employees who are no longer employed by CHEFS all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and unused vested vacation wages pay, either at the time of discharge, or within seventy-two (72) hours of their leaving CHEFS' employ in violation of California Labor Code sections 201, 202, and 203.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CHEFS implemented, on a company-wide basis, an employer-imposed requirement that Mr. Pinkston and other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, CHEFS had a company-wide policy requiring that Mr. Pinkston and other aggrieved employees travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, CHEFS was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

For example, Mr. Pinkston was instructed by CHEFS to travel to a specific medical facility located in Union City, California, and obtain a drug test. Mr. Pinkston followed CHEFS' instructions, traveled approximately 50 miles roundtrip, and underwent the required drug test. Mr. Pinkston spent approximately one (1) hour and 30 minutes traveling to and from the medical facility and spent another 2.5 hours waiting for and undergoing the required drug test.

However, CHEFS did not compensate Mr. Pinkston and other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and examination, or reimburse them for the travel expenses they incurred getting to and from the medical clinic. CHEFS' policy and/or practice of not paying for all costs Mr. Pinkston and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Mr. Pinkston and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

CHEFS had a company-wide policy and practice of failing to pay other aggrieved employees vested vacation wages that were owed to them at the end of their employment, including all vested vacation wages that accrued during employees' final week of employment, in violation of California Labor Code section 227.3. Rather, CHEFS willfully and improperly paid other aggrieved employees their unused and vested vacation wages through their second to last pay period worked.

As an example, CHEFS paid out another aggrieved employee only 6.90 hours of his total 7.67 hours of unused vested vacation pay due. CHEFS failed to pay the aggrieved employee the remaining 0.77 hours balance due that accrued and vested in the aggrieved employee's final week of employment. CHEFS' failure to pay other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Pinkston and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, as stated, CHEFS had a company-wide policy of requiring Mr. Pinkston and other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, as described above, Mr. Pinkston drove for approximately 50 miles roundtrip to obtain a mandatory drug test per CHEFS' instructions, but was not reimbursed for his mileage to and from the medical clinic.

Second, during the relevant time period, CHEFS, on a company-wide basis, required that other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, other aggrieved employees were required to use their personal cellular phones to perform their work, such as calling FedEx and UPS to discuss order pick-ups and deliveries.

Although CHEFS required other aggrieved employees to regularly utilize their personal cellular phone to carry out work-related responsibilities, CHEFS failed to reimburse them for this cost.

CHEFS could have provided Mr. Pinkston and/or other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles to be used for fulfilling work-related tasks. Or, CHEFS could have reimbursed employees for their cellular phone expenses, travel, and mileage. Instead, CHEFS passed these operating costs off onto Mr. Pinkston and/or other aggrieved employees. At all relevant times, Mr. Pinkston did not earn at least two (2) times the minimum wage.

Thus, CHEFS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Pinkston and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

CHEFS failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CHEFS' failure to provide other aggrieved employees with written notice of basic information regarding their employment with CHEFS is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

CHEFS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Pinkston's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Pinkston seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Pinkston, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CHEFS for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Pinkston seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Jamie R. Greene
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Jamie R. Greene', with a stylized, cursive flourish.

Jamie R. Greene

Copy: THE CHEFS' WAREHOUSE WEST COAST, LLC (via U.S. Certified Mail); THE CHEFS' WAREHOUSE, INC. (via U.S. Certified Mail); DEL MONTE CAPITOL MEAT COMPANY, LLC (via U.S. Certified Mail); QZINA SPECIALTY FOODS, INC. (via U.S. Certified Mail); QZINA SPECIALTY FOODS (AMBASSADOR), INC. (via U.S. Certified Mail); Julia Y. Trankiem, Hunton Andrews Kurth LLP, 550 South Hope Street, Suite 2000, Los Angeles, California 90071-2627 (via U.S. Certified Mail)