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11 YVETTE SOTO

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA CLARA**

15 **(UNLIMITED JURISDICTION)**

16 YVETTE SOTO, as an “aggrieved employee”
17 on behalf of other similarly situated “aggrieved
18 employees” under the Labor Code Private
19 Attorney General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 SPECIALTY’S CAFÉ & BAKERY, INC., a
23 California corporation; and DOES 1 through
24 50, inclusive,

25 *Defendant(s).*

Case No.: 20CV365683

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff YVETTE SOTO (hereafter “Plaintiff”), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants SPECIALTY’S CAFÉ & BAKERY, a California corporation;
and DOES 1-50, inclusive (collectively “Defendants”).

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
8 her, the State of California, and other similarly situated aggrieved current and former employees
9 who worked in California as hourly, non-exempt employees, including, but not limited to, kitchen
10 prep workers, sandwich creators, salad creators, baristas, bakers, cashiers, and persons in similar
11 positions, at any time during the period of January 7, 2018 to the present, for civil penalties and
12 other related relief. These claims are based on Defendants’ (1) failure to provide all rest and meal
13 periods; (2) failure to indemnify for necessary work-related expenditures; (3) failure to pay all
14 wages earned for all hours worked at the correct rates of pay; (4) failure to provide accurate
15 written wage statements; and (5) failure to timely pay wages during and upon termination of
16 employment. Accordingly, Plaintiff now seeks to recover civil penalties and related relief through
this representative action.

17 **II. JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
19 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of herself, the State of California, and Aggrieved
22 Employees that solely arise under California law, rather than federal law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Santa Clara County pursuant to California Code of Civil
25 Procedure § 395(a) and § 395.5 in that liability arose in Santa Clara County because at least some
26 of the transactions that are the subject matter of this Complaint occurred therein and/or because
each defendant is found, maintains offices, transacts business, and/or has an agent therein.

27 **III. THE PARTIES**

28 7. Plaintiff, an individual and resident of California, began working for Defendants



1 as an hourly, nonexempt kitchen prep worker on or about July 20, 2018. Plaintiff continuously
2 worked for Defendants from that date until approximately February 12, 2019, when her
3 employment ended. At all relevant times, Plaintiff was an “employee” within the meaning of Title
4 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning
5 of Labor Code Section 2699(c).

6 8. Defendant SPECIALTY’S CAFÉ & BAKERY, INC. is a corporation organized
7 and existing under the laws of California based on Plaintiff’s information and belief.

8 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
9 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
10 is informed and believes and thereon alleges that said defendants are legally responsible for the
11 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
12 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants
13 when ascertained.

14 **A. THE AGGRIEVED EMPLOYEES**

15 10. The “Aggrieved Employees” are all individuals Defendants employed in
16 California as hourly, non-exempt employees, including, but not limited to, kitchen prep workers,
17 sandwich creators, salad creators, baristas, bakers, cashiers, and persons in comparable positions,
18 at any time during the period of January 7, 2018 and entry of judgment (“the PAGA Period”).

19 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
20 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
21 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
22 and scope of such agency or employment, and with the approval and ratification of each of the
23 other Defendants.

24 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
25 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
26 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
27 Employees in accordance with applicable California labor laws as alleged herein.

28 13. Plaintiff is informed and believes and thereon alleges that each and every one of
the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
each acting as agents and/or employees, and/or under the direction and control of each of the other
defendants, and that said acts and failures to act were within the course and scope of said agency,



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employment, and/or direction and control.

IV. FACTUAL ALLEGATIONS

14. On approximately July 20, 2018, Defendants first employed Plaintiff to work in California as an hourly, nonexempt kitchen prep worker at their Mountain View, California restaurant. Defendants continuously employed Plaintiff at their Mountain View location and at their Palo Alto, Sunnyvale, Santa Clara, and San Jose restaurants from that date until approximately February 12, 2019, when her employment ended. At all times, Plaintiff was an hourly, non-exempt employee of Defendants.

15. Defendants paid Plaintiff at the hourly rate of \$16.00. Defendants paid Plaintiff and the Aggrieved Employees on a bi-weekly basis. Defendants regularly scheduled Plaintiff to work shifts in excess of eight hours in a day and 40 hours in a week. At relevant times, Plaintiff also worked shifts in excess of 12 hours.

16. At all relevant times, Defendants failed to consistently provide Plaintiff and the Aggrieved Employees with an uninterrupted, unrestricted 30-minute meal period within the first five hours of work. To ensure adequate staffing levels during the lunch rush, Defendants required Plaintiff and the Aggrieved Employees to take their first meal period late, often six or more hours after their shift start times. Defendants further failed to provide Plaintiff and the Aggrieved Employees with a second uninterrupted, unrestricted 30-minute meal period on workdays of over ten hours.

17. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with one or more meal and/or rest periods in compliance with California laws. On information and belief, Defendants failed to seek an exemption from the California Division of Labor Standards Enforcement. Further, Defendants did not enter into on-duty meal period agreements or meal period waivers with Plaintiff or the Aggrieved Employees.

18. At relevant times, Defendants required Plaintiff and the Aggrieved Employees to perform work while clocked out. Defendants required Plaintiff and the Aggrieved Employees to travel between Defendants' restaurants, such as between their Mountain View and Sunnyvale locations, while clocked out. Defendants failed to pay Plaintiff and the Aggrieved Employees with regular and overtime wages for all such work performed off-the-clock. Additionally, Defendants failed to properly itemize Plaintiff's and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and corresponding number of hours worked



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at each hourly rate for such travel time.

19. Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of their personal mobile telephones to communicate with Defendants. At relevant times, Defendants also required Plaintiff and the Aggrieved Employees to travel between worksites for company business while clocked out. Defendants failed to reimburse Plaintiff and the Aggrieved Employees for such mileage. Defendants also failed to provide mobile communication devices and transportation to Plaintiff and the Aggrieved Employees.

20. At all relevant times, upon resignation or termination, Defendants failed to pay final wages in a timely manner as a result of their failure to pay employees for all work performed off-the-clock. Defendants willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off-the-clock work performed while traveling between work locations on company business.

21. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- A. Not provided with all off duty meal periods;
- B. Not provided with all rest break periods as required by law;
- C. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, regular and overtime wages for work performed while clocked out;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

V. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, et seq.)



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(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all
Defendants)

22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PROVIDE REST PERIODS

24. In relevant part, Section 12 of the Wage Order states

“Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

25. “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break. (Ibid.)” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032.

26. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the



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employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

27. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

28. Defendants failed to provide Plaintiff with all required rest breaks free from any work duties in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all timely rest breaks required by California law.

29. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for workdays in which one or more timely rest breaks were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all workdays on which one or more timely rest breaks were not provided to them as required by California Labor Code § 226.7.

B. FAILURE TO PROVIDE MEAL PERIODS

30. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.”

31. In relevant part, Section 11 of the Wage Order states

“Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...



(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

32. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on days they worked more than ten hours.

33. During the relevant time period, Defendants failed to provide Plaintiff with all meal periods free from any work duties in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all timely meal periods required by California Labor Code § 512 and the Wage Order.

34. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all workdays in which one or more meal periods free from any work duties were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all workdays on which one or more timely meal periods were not provided to them as required by California Labor Code § 226.7.

C. FAILURE TO INDEMNIFY

35. In pertinent part, California Labor Code section 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

36. In relevant part Section 9 of the Wage Order states,

(C) When 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.

37. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.



1 38. On information and belief, Plaintiff alleges on behalf of herself and the Aggrieved
2 Employees that Defendants required them to incur business expenses, including, but not limited
3 to, the use of personal mobile telephones to communicate with Defendants as a necessary
4 condition of employment. Defendants failed to indemnify Plaintiff and the Aggrieved Employees
5 for these expenses both during and after their employment ended. Defendants further required
6 Plaintiff and the Aggrieved Employees to travel between company locations for company
7 business. Defendants failed to indemnify Plaintiff and the Aggrieved Employees for their mileage
8 expenses.

9 **D. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

10 39. Section 2 of the Wage Order defines “hours worked” as “the time during which an
11 employee is subject to the control of an employer, and includes all the time the employee is
12 suffered or permitted to work, whether or not required to do so[.]”

13 40. Section 4 of the Wage order requires an employer to pay non-exempt employees
14 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
15 an employer has actual or constructive knowledge that employees are working.

16 41. Employers must compensate non-exempt employees for “off-the-clock” work
17 (before punching in or after punching out on a time clock) if the employers knew or should have
18 known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22
19 Cal.4th 575, 585.

20 42. In relevant part, California Labor Code § 510 states,

21 Any work in excess of eight hours in one workday and any work in excess of 40
22 hours in any one workweek and the first eight hours worked on the seventh day
23 of work in any one workweek shall be compensated at the rate of no less than one
24 and one-half times the regular rate of pay for an employee. Any work in excess of
25 12 hours in one day shall be compensated at the rate of no less than twice the
26 regular rate of pay for an employee. In addition, any work in excess of eight hours
27 on any seventh day of a workweek shall be compensated at the rate of no less than
28 twice the regular rate of pay of an employee.

 43. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18
years of age or over and to employees 16 or 17 years of age who
are not required by law to attend school and are not otherwise
prohibited by law from engaging in the subject work. Such
employees shall not be employed more than eight (8) hours in any



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workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

44. California Labor Code § 510(a) and the Wage Order require employers to compensate employees at one and one-half times their regular rates of pay for:

- A. All hours worked in excess of eight hours in one workday;
- B. All hours worked in excess of forty hours in one workweek; and,
- C. The first eight hours worked on a seventh consecutive workday during a workweek.

45. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

46. Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

47. Labor Code § 1198 makes it unlawful for an employer to employ an employee



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under conditions that violate the Wage Order.

48. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the Aggrieved Employees with respect to working conditions and compensation arrangements.

49. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay by failing to pay them for all work performed off-the-clock when traveling between company locations on company business.

50. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate the Aggrieved Employees for all hours worked, including but not limited to, regular and overtime hours at the correct rates of pay.

E. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

51. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

52. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;



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1 D. The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

4 53. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 54. As alleged herein, Defendants failed to provide Plaintiff and the Aggrieved
8 Employees all wages owed, including, but not limited to, all regular and overtime wages owed at
9 the correct rates for work performed off-the-clock. As a result, Defendants have failed to properly
10 and accurately itemize each employee’s gross wages earned, net wages earned, the total hour
11 worked, the corresponding number of hours worked by employees, and other requirements of
12 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

13 55. Defendants’ failure to provide Plaintiff and the Aggrieved Employees with
14 accurate wage statements was knowing and intentional. Defendants had the ability to provide
15 Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided
16 wage statements that Defendants knew were not accurate.

17 56. As a result of being provided with inaccurate wage statements by Defendants,
18 Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive
19 accurate wage statements were violated and they were misled about the amount of wages they
20 had actually earned and were owed. In addition, the absence of accurate information on their wage
21 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
22 discovery and mathematical computations to determine the amounts of wages owed, has caused
23 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
24 submission of inaccurate information about wages to state and federal government agencies.
25 Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage
26 statements whether Defendants complied with their obligations under California Labor Code §
27 226(a).

28 **F. UNTIMELY WAGES DURING EMPLOYMENT**

57. Labor Code § 204 states

- (a) All wages, other than those mentioned in Section 201, 201.3, 202,
204.1, or 204.2, earned by any person in any employment are due
and payable twice during each calendar month, on days designated



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in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

58. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages for work performed off-the-clock when traveling between company locations for company business. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

G. UNTIMELY FINAL WAGES

59. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

60. Labor Code § 202 provides that all earned and unpaid wages of an employee who



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quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

61. By failing to pay Plaintiff and the Aggrieved Employees all earned regular and overtime wages at the correct rates, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

62. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

H. CIVIL PENALTIES SOUGHT

63. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.



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1 64. Defendants paid wages to employees on regular intervals. Defendants failed to pay
2 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
3 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
4 all wages earned and all hours worked.

5 65. During the applicable time period, Defendants violated California Labor Code §§
6 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

7 66. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
8 behalf of themselves and other current or former employees, to bring a civil action to recover civil
9 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

10 67. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
11 Employees are entitled to recover civil penalties for each of the Defendants' violations of
12 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802
during the applicable limitations period in the following amounts:

13 A. For violations of California Labor Code § 204, one hundred dollars
14 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
15 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
16 (penalty amounts established by California Labor Code § 210).

17 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
18 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
19 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

20 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
23 each pay period for which the employee was underpaid (penalty amounts established by
California Labor Code § 558).

24 D. For violations of California Labor Code § 1197, one hundred dollars
25 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
26 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
27 (regardless of whether the initial violations were intentionally committed) (penalty amounts
28 established by California Labor Code § 1197.1).



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1 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
2 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
3 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
4 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

5 **G. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

6 68. Plaintiff has complied with the procedures for bringing suit specified in California
7 Labor Code § 2699.3. By letter dated January 7, 2020, Plaintiff gave written notice by certified
8 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
9 provisions of the California Labor Code alleged to have been violated, including the facts and
10 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
11 dated January 7, 2020 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s
12 letter.

13 69. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
14 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
15 connection with their claims for civil penalties.

16 **VI. PRAYER FOR RELIEF**

17 70. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
18 for relief and judgment against Defendants as follows:

- 19 A. Civil penalties;
20 B. Costs of suit;
21 C. Reasonable attorneys’ fees; and
22 D. Such other relief as the Court deems just and proper.

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24 ///

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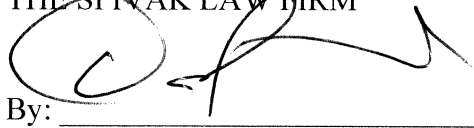
VII. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: March 12, 2020

THE SPIVAK LAW FIRM

By: 

DAVID SPIVAK
CARL KAPLAN, Attorneys for Plaintiff,
YVETTE SOTO, and the Aggrieved
Employees



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EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

January 7, 2019

Attn: PAGA Administrator
PAGAfilings@dir.ca.gov

RE: *Yvette Soto/Specialty's Cafe & Bakery, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Yvette Soto (hereafter "Soto") provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly, non-exempt employees, including but not limited to kitchen prep workers, sandwich creators, salad creators, baristas, bakers, cashiers, and persons in similar positions (hereafter referred to as the "Aggrieved Employees"), by Specialty's Cafe & Bakery, Inc., a California corporation (hereafter referred to as "Specialty's") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Specialty's has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Soto and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order"), paragraph 2.F, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about July 20, 2018, Specialty's first employed Soto to work in California as an hourly, nonexempt kitchen prep worker. Specialty's continuously employed

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Soto from that time until on or about February 12, 2019, when her employment ended. Soto commenced her employment at the Specialty's location in Mountain View, California. Later, she also worked at Specialty's locations in Palo Alto, Sunnyvale, Santa Clara, and San Jose, California.

Specialty's paid Soto at the hourly rate of \$16.00. Specialty's paid Soto and the Aggrieved Employees on a biweekly basis. Specialty's regularly scheduled Soto to work shifts in excess of eight hours in a day and 40 hours in a week. At relevant times, Soto also worked shifts in excess of 12 hours.

At all relevant times, Specialty's failed to consistently provide Soto and the Aggrieved Employees with an uninterrupted, unrestricted 30-minute meal period within the first five hours of work. To ensure adequate staffing levels during the lunch rush, Specialty's required Soto and the Aggrieved Employees to take their first meal period late, often six or more hours after their shift start times. Specialty's further failed to provide Soto and the Aggrieved Employees with a second uninterrupted, unrestricted 30-minute meal period on workdays of over ten hours.

At all relevant times, Specialty's failed to provide Soto and the Aggrieved Employees adequate rest periods in violation of Labor Code § 226.7 and the Wage Order. Specialty's routinely prohibited Soto and the Aggrieved Employees from taking a second rest period when they worked shifts in excess of six hours. When Soto complained about Specialty's failure to provide a second rest period, Specialty's informed her that because her shift that day was only 7 and ½ hours long, she was not permitted a second rest period. Additionally, Specialty's required Soto and the Aggrieved Employees to remain on the premises – either in the café or in the adjoining parking lot – during their rest periods.

Specialty's also failed to pay Soto and the Aggrieved Employees premium wages for those workdays it failed to provide them with one or more meal and/or rest periods in compliance with California laws. Specialty's failed to seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Further, Specialty's did not

enter into on-duty meal period agreements or meal period waivers with Soto or the Aggrieved Employees

Specialty's required Soto and the Aggrieved Employees to perform work while clocked out. During the relevant time period, Specialty's required Soto and the Aggrieved Employees to travel between its restaurants, such as between Specialty's' Mountain View and Sunnyvale locations, while clocked out. Specialty's failed to pay Soto and the Aggrieved Employees with regular and overtime wages for all such work performed off-the-clock. Additionally, Specialty's failed to properly itemize Soto's and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and corresponding number of hours worked at each hourly rate for such travel time.

Specialty's required Soto and the Aggrieved Employees to incur certain business expenses in the course of performing their duties, including the use of their personal mobile telephones to communicate with Specialty's. At relevant times during the applicable limitations period, Specialty's also required Soto and the Aggrieved Employees to travel between worksites for company business while clocked out. Specialty's failed to reimburse Soto and the Aggrieved Employees for such mileage. Specialty's also failed to provide mobile communication devices and transportation to Soto and the other Aggrieved Employees.

At all relevant times, upon resignation or termination, Specialty's failed to pay final wages in a timely manner as a result of its failure to pay employees for all work performed off-the-clock. Specialty's willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off the clock work performed while traveling between work locations on company business.

For the reasons stated herein, Soto alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Specialty's failed to provide Soto and the Aggrieved Employees with all off-duty rest breaks and meal periods;

- b) Specialty's failed to pay Soto and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;
- c) Specialty's failed to pay Soto and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) Specialty's failed to compensate Soto and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) Specialty's failed to indemnify Soto and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- f) Specialty's failed to provide Soto and the Aggrieved Employees with accurate and complete wage statements;
- g) Specialty's failed to timely pay Soto and the Aggrieved Employees all earned and unpaid wages during their employment with Specialty's; and
- h) Specialty's failed to timely pay Soto and those Aggrieved Employees who are former employees all earned and unpaid wages at the termination of their employment with Specialty's.

Accordingly, Soto now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Specialty's' alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, §1. The term “Public Housekeeping Industry” means “any industry, business, or establishment which provides meals, housing, or maintenance services” and includes, but is not limited to, the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;

Wage Order, §2(P) (emphasis added). At all relevant times during the applicable limitations period, Specialties employed Soto and the Aggrieved Employees as kitchen prep workers, sandwich creators, salad creators, baristas, bakers, cashiers, and comparable positions. Accordingly, Soto and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order,

the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the

employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

As alleged herein, Specialty's intentionally failed to provide all off-duty rest breaks and/or meal periods to Soto and the Aggrieved Employees as required

by law. As a result, Specialty's violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Soto seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay (penalties set by Labor Code §558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure to Pay All Wages Earned for All Hours Worked at the Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

In relevant part, Labor Code § 510 states:

“...Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh

day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

In relevant part, Labor Code § 1194 states:

“(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wages or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, Section 3 of the Wage Order states:

“(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

Labor Code §1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Section 4 of the Wage Order, pertaining to "Minimum Wages" states in pertinent part:

- (A) Every employer shall pay to each employee wages not less than the following:
 - (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:
 - a. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017;
 - b. Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018;

- c. Twelve dollars (\$12.00) per hour for all hours worked effective January 1, 2019; and
- d. Thirteen dollars (\$13.00) per hour for all hours worked, effective January 1, 2020.

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

- a. Ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017;
- b. Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018;
- c. Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2019; and
- d. Twelve dollars (\$12.00) per hour for all hours worked, effective January 1, 2020.

...

- (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Employers must compensate nonexempt employees for all work whether or not it is scheduled or recorded if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Specialty's failed to pay Soto and the Aggrieved Employees for all hours worked as required by California law, including, but not limited to, all regular and overtime wages for work they performed while clocked out.

Because Specialty's failed to pay Soto and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, Soto seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2)); and
4. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."

At relevant times during the applicable limitations period, Specialty's required Soto and the Aggrieved Employees to use personal mobile telephones to

communicate with Specialty's as a necessary condition of employment. Specialty's failed to indemnify Soto and the Aggrieved Employees for these expenses both during and after their employment ended. At relevant times, Specialty's required Soto and the Aggrieved Employees travel between company locations for company business. Specialty's failed to indemnify Soto and the Aggrieved Employees for their mileage expenses.

Accordingly, Soto seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

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

At all relevant times during the applicable limitations period, Specialty's violated California Labor Code § 226 by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. Specialty's failed to state in the wage statements it issued to Soto and Aggrieved Employees all the hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock.

Accordingly, Soto seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Specialty's failures to pay Soto and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided and/or late rest and meal periods within the time periods set by California Labor Code § 204, Specialty's failed to timely pay all wages due during employment. Accordingly, Soto seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Specialty's failed to provide Soto and the Aggrieved Employees all wages owed, including but not limited to all regular and overtime wages for all off-the-clock work they performed. As a result, Specialty's willfully failed to pay Soto and the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Specialty's has violated California Labor Code §§ 201, 202 and 203.

Accordingly, on behalf of herself and Aggrieved Employees, Soto seeks civil penalties from Specialty's as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 5 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Specialty's has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, records pertaining to the total premium wages earned for missed meal and rest periods and records pertaining to all unpaid hours worked. Accordingly, Soto seeks civil penalties from Specialty's on behalf of herself and Aggrieved Employees as follows:

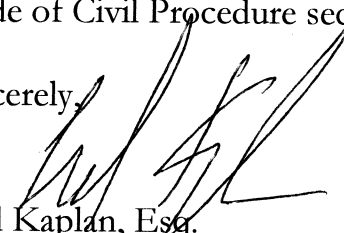
1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Carl Kaplan, Esq.
carl@spivaklaw.com

cc: Yvette Soto
Walter Haines, Esq.

Specialty's Cafe & Bakery, Inc.
c/o Agent for Service of Process
CSC – Lawyers Incorporating Service
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