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K. BIKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By D. WAGNER

5 Attorneys for Plaintiffs VICTOR GONZALEZ, MERCADEZ CHATMAN, LISETH
6 GONZALEZ, ARTHUR PAULA, ALAYNA MOSER, JOSALYN MOSER, BRIANNA
7 PADILLA AND PAIGE MOORE-RISINGER, on behalf of themselves and on behalf of all
other similarly-situated Aggrieved Employees

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF CONTRA COSTA**

10 VICTOR GONZALEZ, an individual;
11 MERCADEZ CHATMAN, an individual;
12 LISETH GONZALEZ, an individual;
13 ARTHUR PAULA, an individual;
14 ALAYNA MOSER, an individual;
15 JOSALYN MOSER, an individual;
16 BRIANNA PADILLA, an individual; and
17 PAIGE MOORE-RISINGER, an individual,
on behalf of themselves and on behalf of all
other similarly situated Aggrieved
Employees,

18 Plaintiffs,

19 v.
20

21 MOD SUPER FAST PIZZA
22 (CALIFORNIA), LLC, a Delaware limited
23 liability company; and
DOES 1 through 25, inclusive,

24 Defendants.
25

Case No.: **C 2 0 - 0 1 7 6 2**

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE § 2698 ET
SEQ. (Private Attorneys General Act of 2004)**

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 39, FOR ALL
PURPOSES.

SUMMONS ISSUED

26 Plaintiffs VICTOR GONZALEZ, MERCADEZ CHATMAN, LISETH GONZALEZ,
27 ARTHUR PAULA, ALAYNA MOSER, JOSALYN MOSER, BRIANNA PADILLA, and
28 PAIGE MOORE-RISINGER ("Plaintiffs"), on behalf of themselves and on behalf of all other

1 similarly-situated Aggrieved Employees (“Aggrieved Employees”) hereby bring this
2 Complaint (“Complaint”) against Defendant MOD SUPER FAST PIZZA (CALIFORNIA),
3 LLC, a Delaware limited liability company (“Defendant”), and DOES 1 through 25, inclusive
4 (collectively, the “Defendants”) and state and allege as follows:

5 6 **INTRODUCTION**

7 1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General
8 Act of 2004) (the “PAGA”) for Defendant’s violations of Labor Code §§ 201, 202, 203, 204,
9 226(a), 226.7, 510, 512, 1174, 1194, 1197, and 2802, for failure to pay the applicable minimum
10 wage, unpaid wages, unpaid overtime compensation, meal and rest break violations and unpaid
11 premiums for such meal and rest break violations, failure to maintain records of all hours worked,
12 failure to provide accurate itemized wage statements, and failure to reimburse expenses incurred
13 in the discharge of work related duties.

14 2. This Complaint challenges Defendant’s systemic illegal employment practices resulting
15 in violations of the state provisions of the Labor Code against Plaintiffs.

16 3. Plaintiffs are informed and believe and thereon allege that Defendants jointly and
17 severally acted intentionally and with deliberate indifference and conscious disregard to Plaintiffs’
18 rights.
19

20 **THE PARTIES**

21 4. Plaintiff VICTOR GONZALEZ is and was, at all times relevant to this Complaint, an
22 adult individual working in Contra Costa County, California.

23 5. Plaintiff MERCADEZ CHATMAN is and was, at all times relevant to this Complaint, an
24 adult individual working in Contra Costa County, California.

25 6. Plaintiff LISETH GONZALEZ is and was, at all times relevant to this Complaint, an adult
26 individual working in Contra Costa County, California.

27 7. Plaintiff ARTHUR PAULA is and was, at all times relevant to this Complaint, an adult
28 individual working in San Mateo County, California.

1 8. Plaintiff ALYANA MOSER is and was, at all times relevant to this Complaint, an
2 individual working in Alameda County, California.

3 9. Plaintiff JOSALYN MOSER is and was, at all times relevant to this Complaint, an
4 individual working in Alameda County, California.

5 10. Plaintiff BRIANA PADILLA is and was, at all times relevant to this Complaint, an
6 individual working in Alameda County, California.

7 11. Plaintiff PAIGE MOORE RISINGER is and was, at all times relevant to this Complaint,
8 an individual working in Alameda County, California.

9 12. At all times relevant to this Complaint, Defendant MOD SUPER FAST PIZZA
10 (CALIFORNIA), LLC, is and was a Delaware limited liability company with a principal business
11 office in Sacramento, California conducting regular business throughout California, where it
12 currently employs or formerly employed Plaintiffs and the Aggrieved Employees.

13 13. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under the
14 fictitious names DOES 1–25, inclusive, but will seek leave to amend and serve such fictitiously-
15 named Defendants pursuant to California Code of Civil Procedure section 474 once their names
16 and capacities become known.

17 14. Plaintiffs are informed and believe, and thereon allege, that DOES 1–25, inclusive, are
18 the partners, agents, owners, shareholders, managers, principals or employees of Defendant
19 and/or and were acting on behalf of Defendant.

20 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
21 omissions alleged herein was performed by or is attributable to Defendant and/or DOES 1–25,
22 inclusive, (collectively “Defendants”), each acting as the agent for the other, with legal authority
23 to act on the other’s behalf. The acts of any and all Defendants were in accordance with, and
24 represent the policy of, all Defendants.

25 16. At all times herein mentioned, Defendants, and each of them, ratified each and every act
26 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
27 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
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1 causing the damages herein alleged.

2 17. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants is in
3 some manner intentionally, negligently or otherwise responsible for the acts, omissions,
4 occurrences and transactions alleged herein.

5 **JURISDICTION**

6 18. This Court has jurisdiction over the violations of the PAGA and Labor Code §§ §§ 201,
7 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1194, 1197, and 2802, for failure to pay the
8 applicable minimum wage, unpaid wages, unpaid overtime compensation, meal and rest break
9 violations and unpaid premiums for such meal and rest break violations, failure to maintain
10 records of all hours worked, failure to provide accurate itemized wage statements, and failure to
11 reimburse expenses incurred in the discharge of work related duties.

12 19. This Court has jurisdiction over all Defendants, because upon information and belief, each
13 party has sufficient minimum contacts in California or otherwise intentionally avails itself of
14 California law so as to render the exercise of jurisdiction over it by the California courts consistent
15 with traditional notions of fair play and substantial justice.

16 20. Venue is proper in this Court because, upon information and belief, the named Defendant
17 transacts business and/or has offices in this county and the acts and omissions alleged herein took
18 place in this county.

19 21. The civil penalties sought in this action exceed the minimum jurisdiction limits of this
20 Court and will be established according to proof at trial.

21 **ALTER EGO, AGENCY, AND JOINT EMPLOYERS**

22 22. Plaintiffs are informed and believe, and based thereon allege, that there exists such a unity
23 of interest and ownership between Defendants that the individuality and separateness of
24 Defendants has never existed or has ceased to exist.

25 23. Plaintiffs are informed and believe, and based thereon allege, that despite the formation
26 of purported corporate existence, Defendants are in reality one and the same including, but not
27 limited to, because:
28

- 1 a. Defendants are completely dominated and controlled by the same company,
2 which committed the violations of laws as set forth in this complaint, and which
3 has hidden and currently hide behind separate company formations to perpetrate
4 frauds, circumvent statutes, or accomplish some other wrongful or inequitable
5 purpose;
- 6 b. Each of the Defendants has acted on behalf of the other Defendants, who violate,
7 or cause to be violated, the California Labor Code as described herein;
- 8 c. Each of the Defendants is an owner, manager, officer, and/or managing agent of
9 the other Defendants, and the term “managing agent” has the same meaning as in
10 subdivision (b) of Section 3294 of the California Civil Code;
- 11 d. Each of the Defendants derive actual and significant monetary benefits by and
12 through the other Defendants, and their unlawful conduct, and by using the other
13 Defendants as the funding source for their own personal expenditures;
- 14 e. Defendants, while really one and the same, were segregated to appear as though
15 separate and distinct for purposes of perpetrating a fraud, circumventing a statute,
16 or accomplishing some other wrongful or inequitable purpose;
- 17 f. Defendants do not comply with all requisite corporate formalities to maintain a
18 legal and separate corporate existence; and
- 19 g. The business affairs of Defendants are and at all times relevant were so mixed
20 and intermingled that the same cannot reasonably be segregated, and the same are
21 in inextricable confusion. Defendants’ purported separateness is and at all times
22 relevant was used as a mere shell and conduit for the conduct of certain of
23 Defendants’ affairs, and are and were the alter ego of one another. The
24 recognition of the separate existence of Defendants would not promote justice in
25 that it would permit Defendants to insulate themselves from liability to Plaintiffs
26 for violations of the Labor Code and other statutory violations. The corporate
27 existence of Defendants should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiffs.

1 24. Accordingly, each of Defendants is the alter ego of one another, and the fiction of their
2 separate corporate existence must be disregarded.

3 25. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
4 thereon allege, that Defendants were Plaintiffs' joint employers by virtue of a joint enterprise,
5 and that Plaintiffs were employees of Defendants. Plaintiffs performed services for each and
6 every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared
7 control of Plaintiffs as employees, either directly or indirectly, and the manner in which
8 Defendants' business was and is conducted.

9
10 **GENERAL ALLEGATIONS**

11 26. Plaintiffs and the Aggrieved Employees currently work or formerly worked for Defendant
12 at the MOD SUPER FAST PIZZA stores located throughout the state of California during the
13 relevant period.

14 27. Plaintiffs and the Aggrieved Employees work or worked in associate and/or store
15 management positions primarily engaged in performing non-exempt job duties that require or
16 required them to interact with managers, supervisors, service providers, and other MOD SUPER
17 FAST PIZZA team members each workday during their scheduled shifts.

18 28. As a matter of routine and daily practice, Plaintiffs and the Aggrieved Employees are or
19 were required to use their personal cell phones in conducting their daily duties and work-related
20 communications. Defendant's stores were not equipped with phones. Therefore, Plaintiffs and
21 the Aggrieved Employees were required by Defendant to regularly use their own personal cell
22 phones in order to communicate with one another via phone calls and text messages. Personal
23 cell phone use was also required in order for Plaintiffs and the Aggrieved Employees to order
24 necessary inventory and supplies for their stores.

25 29. Plaintiffs and the Aggrieved Employees were required to tend to work-related phone calls
26 from other team members and outside vendors and suppliers during Plaintiffs and the Aggrieved
27 Employees' lunches and rest breaks, as well as when Plaintiffs and the Aggrieved Employees
28 were at home and otherwise completely off the clock. These off-the-clock, work-related

1 communications were never logged or recorded as time worked by the Plaintiffs and Aggrieved
2 Employees by the Defendant despite the fact that such work related activities were encouraged,
3 and even required, by Defendant.

4 30. These off-the clock communications took place every workweek of the relevant statutory
5 period during Plaintiffs' employment with Defendant. Further, on information and belief,
6 Plaintiffs allege the Aggrieved Employees had same and similar off-the-clock communications
7 during every pay period of their employment with Defendant that was never recorded as part of
8 Defendant's timekeeping records.

9 31. Plaintiffs have never been compensated for the time spent engaged in their off-the-clock
10 communications. On information and belief, Plaintiffs allege the Aggrieved Employees likewise
11 have never been paid for the time they spent performing such off-the clock, work-related
12 communications.

13 32. In addition, at no time has Defendant reimbursed Plaintiffs and the Aggrieved Employees
14 for the expenses incurred in the utilization of their personal cell phones, which are and were
15 routinely used and required in the discharge of their work duties.

16 33. Plaintiffs and the Aggrieved Employees were or are compensated at an hourly rate of pay.
17 They work or worked very hard during their scheduled shifts in order to make as many sales as
18 possible and to keep up with all orders and store upkeep.

19 34. Furthermore, any meal periods or rest periods were breaks in name only. In fact, during
20 the statutory period actual rest and meal breaks were not provided to Plaintiffs and the Aggrieved
21 Employees. Although Defendant likely has written rest break and meal break policies, in reality
22 and practice any such policies are ignored and literally never enforced. When combined with the
23 simultaneous requirement that Plaintiffs and the Aggrieved Employees are required to use their
24 personal cell phones as "store phones" so that they can always be available, the effect is that all
25 employees and managers are literally forced to have on-duty rest and meal breaks and when the
26 stores are particularly busy, they don't have the ability to take any timely and duty-free rest or
27 meal breaks at all. Plaintiffs and the Aggrieved Employees commonly work/worked more than
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1 five hours without being provided a proper meal break. Further at no time did the Plaintiffs or
2 the Aggrieved Employees sign a valid meal break waiver.

3 35. Defendant's managers and supervisors are aware of and understand these working
4 conditions and Defendant's derelict indifference to labor laws governing rest and meal break
5 periods all too well. Indeed, the law is and was actively and knowingly contradicted in reality
6 and practice. Moreover, Defendant has failed to pay Plaintiffs and the Aggrieved Employees
7 "premium pay" to which they are/were lawfully entitled, equal to one hour of wages at their
8 regular hourly rate of pay, in lieu of such unprovided and non-compliant rest periods and meal
9 periods.

10 36. Plaintiffs, Mercadez Chatman and Liseth Gonzalez worked at Defendant's location in El
11 Cerrito, California. Like many cities and municipalities in California, El Cerrito mandates a
12 higher minimum wage than the state minimum wage. However, at all times relevant, Defendant
13 ignored the local minimum wage laws and only paid Plaintiffs Mercadez Chatman and Liseth
14 Gonzalez and other Aggrieved Employees at the El Cerrito location the state minimum wage,
15 rather than the minimum wage mandated by the City of El Cerrito.

16 37. Similarly, Plaintiff Arthur Paula worked at Defendant's location in Daly City, California.
17 Like many cities in California, Daly City mandates a higher minimum wage than the state
18 minimum wage. However, at all times relevant, Defendant only paid Plaintiff Arthur Paula and
19 similarly situated Aggrieved Employees at the Daly City location the state minimum wage rather
20 than the minimum wage mandated by Daly City.

21 38. Plaintiffs allege on information on belief that at all times relevant, Defendant has
22 uniformly maintained a policy and practice of only paying Plaintiffs and the Aggrieved
23 Employees state minimum wage rates, rather than the minimum wage rates applicable to the cities
24 and or counties in which they worked. On information and belief, Plaintiffs allege that at all
25 times relevant, Defendant has uniformly failed to pay the applicable, proper minimum wage that
26 is and was owed to the Aggrieved Employees who work/worked in the following cities and/or
27 counties:
28

1 *Alameda* (see Alameda Municipal Code 4-60);
2 *Cupertino* (see Cupertino Municipal Code 3.37);
3 *Daly City*: (see Daly City Municipal Code 8.76);
4 *El Cerrito* (see El Cerrito Municipal Code 6.95.040);
5 *Fremont* (see Fremont Municipal Code 5.30);
6 *Los Angeles – city* (see Los Angeles Municipal Code, Ch. XVIII, Art. 7, §§ 187.00 *et*
7 *seq.*);
8 *Los Angeles – county* (see CA Code of Ordinances 8.100);
9 *Novato* (see Novato Municipal Code 2-30);
10 *San Jose* (see San Jose Municipal Code 4.100);
11 *Santa Clara* (see Santa Clara Municipal Code 3.20); and
12 *Santa Rosa* (see Santa Rosa Municipal Code 10-45).

13 39. At all times relevant, Defendant failed to compensate Plaintiffs at the applicable and
14 proper overtime rate to which they were lawfully entitled when they worked overtime. Plaintiffs
15 allege on information and belief that at all relevant times, Defendant likewise failed to
16 compensate the Aggrieved Employees working in the above-referenced cities and/or counties at
17 the proper applicable overtime rates of pay. On information and belief, Plaintiffs allege that
18 Defendant’s failure to compensate them and the Aggrieved Employees at the correct, applicable
19 overtime rates was a result of Defendant’s policy of only paying its employees the state minimum
20 wage, rather than the minimum wage mandated by the cities and counties in which their stores
21 are located where the Plaintiffs and Aggrieved Employees worked.

22 40. Plaintiff, Victor Gonzalez worked more than eight (8) hours per day and/or more than
23 forty (40) hours in a workweek in each of the following pay periods: September 9, 2019 to
24 September 22, 2019; September 23, 2019 to October 6, 2019; October 7, 2019 to October 20,
25 2019; October 21, 2019 to November 3, 2019; and November 4, 2019 to November 17, 2019. As
26 a result of Defendant’s failure to track and record Mr. Gonzalez’s off-the-clock work related
27 communications, and failure to compensate him for that time, Defendant failed to pay him
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1 overtime and double-time compensation to which he was and is rightfully entitled for his off-the-
2 clock work performed, during the workweeks when he worked more than eight (8) hours per day
3 and/or more than forty (40) hours. As a result, Defendant owes Plaintiff Gonzalez and similarly
4 situated Aggrieved Employees who also performed work while off the clock that was never
5 recorded, unpaid overtime in an amount to be determined according to proof at trial.

6 41. Plaintiff, Mercadez Chatman worked more than eight (8) hours per day and/or more than
7 forty (40) hours in a workweek in each of the following pay periods: November 27, 2017 to
8 December 10, 2017; December 11, 2017 to December 17, 2017; May 7, 2018 to May 20, 2018;
9 December 3, 2018 to December 16, 2018; December 31, 2018 to January 13, 2019; January 14,
10 2019 to January 27, 2019; March 11, 2019 to March 24, 2019; March 25, 2019 to April 7, 2019;
11 April 8, 2019 to April 21, 2019; April 22, 2019 to May 5, 2019; May 6, 2019 to May 19, 2019;
12 May 20, 2019 to June 2, 2019; June 17, 2019 to June 30, 2019; July 15, 2019 to July 28, 2019;
13 July 29, 2019 to August 11, 2019; August 12, 2019 to August 25, 2019; August 26, 2019 to
14 September 8, 2019; and September 9, 2019 to September 22, 2019. She may have worked more
15 than eight (8) hours per day and/or more than forty (40) hours in a workweek in additional pay
16 periods, but Defendant has not provided her copies of itemized wage statements for all pay
17 periods she worked during the relevant statutory period. As a result of Defendant's failure to
18 track or record and maintain records of her off-the-clock communications, and failure to
19 compensate her for that time worked, Defendant consequently failed to pay her overtime
20 compensation for her off-the-clock work during each and every pay period when there were
21 workdays and workweeks when she worked more than eight (8) hours per day and/or more than
22 forty (40) hours in a workweek. As a result, Defendant owes her unpaid overtime in an amount
23 to be determined according to proof at trial.
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25 42. Plaintiffs allege on information and belief that the Aggrieved Employees also performed
26 off-the-clock work, and that Defendant failed to compensate them for such off-the-clock work.
27 Plaintiffs allege on information and belief that the Aggrieved Employees worked more than eight
28 (8) hours in a workday and more than forty (40) hours in a workweek during their employment

1 with Defendant. Plaintiffs allege on information and belief that as a result of Defendant's failure
2 to track and record the Aggrieved Employees' off-the-clock work and failure to compensate them
3 for that time worked Defendant had failed to pay the Aggrieved Employees overtime
4 compensation owed for each and every pay period when they worked more than eight (8) hours
5 per day and/or more than forty (40) hours in a workweek. As a result, Defendant owes the
6 Aggrieved Employees unpaid overtime in an amount to be determined according to proof at trial.

7 43. At all times relevant, Labor Code section 200(a) defined "wages" as "all amounts for
8 labor performed by employees of every description, whether the amount is fixed or ascertained
9 by the standard of time, task, piece, commission basis, or other method of calculation." Labor
10 Code section 200(b) defines "labor" as "work or service whether rendered or performed under
11 contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is
12 performed personally by the person demanding payment."

13 44. At all times relevant, Labor Code section 201 provided that if an employer discharges an
14 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

15 45. Defendant violated Labor Code section 201 by failing to immediately pay Plaintiffs all
16 wages earned and unpaid at the time of discharge. On information and belief, Plaintiffs allege
17 that Defendant likewise failed to immediately pay all Aggrieved Employees discharged by
18 Defendant on the date of their discharge.

19 46. At all times relevant, Labor Code section 202 provided that if an employee not having a
20 written contract for a definite period quits his or her employment, his or her wages shall become
21 due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance
22 notice of their intention to quit, in which case the employee is entitled to all of their wages due
23 at the time of quitting.

24 47. On information and belief, Plaintiffs allege that Defendant has violated Labor Code
25 section 202 by failing to pay all Aggrieved Employees who quit their employment with Defendant
26 their final wages within the 72-hour period prescribed by Section 202.

27 48. At all times relevant, Labor Code section 203 provided that an employer who willfully
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1 fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages
2 of an employee who is discharged or who quits, the wages of the employee shall continue as a
3 penalty from the due date thereof at the same rate until paid or until an action therefore is
4 commenced, but the wages shall not continue for more than 30 days.

5 49. Because Defendant has violated Labor Code sections 201 and 202, Defendant is liable to
6 Plaintiffs and the Aggrieved Employees for the “waiting time penalties” set forth in Section 203.

7 50. At all times relevant, Labor Code section 204(a) provided in relevant part that “[a]ll wages,
8 other than those mentioned in sections 201, 202, 204.1, or 204.2, earned by any person in any
9 employment, are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
12 during which the labor was performed, and labor performed between the 16th and the last day,
13 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.”

15 51. Defendant violated Labor Code section 204(a) by failing to timely pay Plaintiffs all wages
16 earned at least twice monthly.

17 52. On information and belief, Plaintiffs allege that Defendant also violated Labor Code
18 section 204(a) by failing to timely pay the Aggrieved Employees all wages earned at least twice
19 monthly.

20 53. At all times relevant, Labor Code section 210 provided in relevant part: “every person
21 who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1,
22 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
23 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each
24 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
25 failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

26 54. Defendant is subject to the penalties set forth in Labor Code section 210 because
27 Defendant violated Labor Code section 204 with respect to Plaintiffs and the Aggrieved
28

1 Employees.

2 55. At all times relevant, Labor Code section 218 provided that “nothing in this article shall
3 limit the right of any wage claimant to sue directly or through an assignee for any wages or
4 penalty due him under this article.” Plaintiffs and the Aggrieved Employees are therefore entitled
5 to sue Defendant directly for the wages and penalties due to them as set forth herein.

6 56. At all times relevant, Labor Code section 226(a) required Defendant to “furnish each of
7 [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s
8 wages, or separately when wages are paid by personal check or cash, an itemized statement in
9 writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net
10 wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all
11 applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate by the employee.”

13 57. Defendant violated Labor Code section 226(a) by failing to furnish Plaintiffs with
14 accurately itemized wage statements as defined therein. On information on belief, Plaintiffs
15 allege that Defendant likewise failed to furnish the Aggrieved Employees with accurately
16 itemized wage statements.

17 58. At all times relevant, Labor Code section 226.7(c) provided in relevant part: “If an
18 employer fails to provide an employee a meal or rest or recovery period in accordance with a
19 state law . . . the employer shall pay the employee one additional hour of pay at the employee’s
20 regular rate of compensation for each workday that the meal or rest or recovery period is not
21 provided.”

22 59. Defendant failed to pay Plaintiffs the “premium pay” owed to them as a result of
23 Defendant’s failure to provide meal periods and rest periods. On information and belief, Plaintiffs
24 allege that Defendant likewise failed to pay the Aggrieved Employees the “premium pay” owed
25 to them as a result of Defendant’s failure to provide meal periods and rest break periods.

26 60. At all times relevant, Labor Code section 510 provided in relevant part: “Any work in
27 excess of eight hours in one workday and any work in excess of 40 hours in one workweek and
28

1 the first eight hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate for pay for an
3 employee.”

4 61. Defendant violated Labor Code section 510 by failing to compensate Plaintiffs at the
5 applicable overtime rate when they worked overtime off-the-clock. On information and belief,
6 Plaintiffs allege that Defendant violated Labor Code section 510 by failing to compensate the
7 Aggrieved Employees at the applicable overtime rates when they worked overtime off-the-clock.

8 62. At all times relevant, Labor Code section 512 provided: “An employer shall not employ
9 an employee for a work period of more than five hours per day without providing the employee
10 with a meal period of not less than 30 minutes, except that if the total work period per day of the
11 employee is no more than six hours, the meal period may be waived by mutual consent of both
12 the employer and employee. An employer shall not employ an employee for a work period of
13 more than 10 hours per day without providing the employee with a second meal period of not less
14 than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
15 period may be waived by mutual consent of the employer and the employee only if the first meal
16 period was not waived.”

17 63. Defendant violated Labor Code section 512 by failing to provide meal periods to Plaintiffs
18 and the Aggrieved Employees as required therein.

19 64. At all times relevant, Labor Code section 1174(d) provided in relevant part that “[e]very
20 person employing labor in this state shall: . . . [k]eep, at a central location in the state or
21 establishments at which employees are employed, payroll records showing the hours worked
22 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
23 piece rate paid to, employees employed at the respective plants or establishments. These records
24 shall be kept in accordance with rules established for this purpose by the commission, but in any
25 case shall be kept on file for not less than three years. An employer shall not prohibit an employee
26 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate
27 units earned.”
28

1 65. Defendant violated Labor Code section 1174(d) by failing to accurately keep the records
2 required thereby.

3 66. At all times relevant, Labor Code section 1194 provided in relevant part that “any
4 employee receiving less than the legal minimum wage or the legal overtime compensation
5 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full
6 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
7 attorney’s fees, and costs of suit.”

8 67. As a result of Defendant’s failure to pay Plaintiffs and the Aggrieved Employees overtime
9 compensation for overtime worked off the clock, they are entitled to recover the unpaid balance
10 of the full amount of the unpaid overtime compensation that Defendant owes them, including
11 interest thereon, reasonable attorney’s fees, and costs of suit in this action.

12 68. At all times relevant, Labor Code section 1197 provided in relevant part: “The minimum
13 wage for employees fixed by . . . any applicable state or local law, is the minimum wage to be
14 paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

15 69. Defendant violated Labor Code section 1197 by failing to pay Plaintiffs and the
16 Aggrieved Employees the applicable minimum wage set by local law. Plaintiffs allege on
17 information and belief that Defendant violated Labor Code section 1197 by failing to pay the
18 Aggrieved Employees the applicable minimum wage set by local law.

19 70. At all times relevant, Labor Code section 1194.2(a) provided in relevant part: “In any
20 action under Section . . . 1194 . . . to recover wages because of the payment of a wage less than
21 the minimum wage fixed by an order of the commission or by statute, an employee shall be
22 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
23 interest thereon.”

24 71. As a result of Defendant’s failure to pay Plaintiffs and the Aggrieved Employees the
25 minimum wage mandated by local law, Defendant owes Plaintiffs the balance of the unpaid
26 minimum wages, liquidated damages, and interest thereon pursuant to Labor Code sections 1194
27 and 1194.2.
28

1 72. At all times relevant, Labor Code Section 2802 provided that an employer shall indemnify
2 his or her employees for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties.

4 73. Defendant violated Labor Code section 2802 by requiring Plaintiffs and the Aggrieved
5 Employees to use their personal cell phones to perform their job duties, but failed to reimburse
6 them for expenses they incurred in the use of their personal cell phones in performing their daily
7 job duties.

8 74. In summary, Defendant has violated Labor Code sections 201, 202, 203, 204, 226, 226.7,
9 510, 512, 1174, 1194, and 2802 with respect to Plaintiffs and the Aggrieved Employees. As a
10 result of Defendant's unlawful policies and practices, Defendant has unlawfully withheld wages
11 and penalties owed to Plaintiffs and the Aggrieved Employees in an amount that exceeds the
12 jurisdictional minimum of this Court and to be determined according to proof at trial.

13 75. By practicing, employing, and utilizing the unlawful employment practices and policies
14 outlined above, Defendant has engaged in, and continues to engage in, unfair business practices
15 in violation of California law.

16 76. Defendant's engagement in such unfair business practices constitutes unfair competition
17 and provides Defendant an unfair advantage over Defendant's law-abiding business competitors.
18 Furthermore, Defendant's engagement in such unfair business practices has deprived Plaintiffs
19 and the Aggrieved Employees of the general minimum working standards and entitlements due
20 to them under California law and the Industrial Welfare Commission wage orders as described
21 herein.

22 77. As a direct result of the violations alleged herein, Plaintiffs and the Aggrieved Employees
23 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of wages,
24 lost interest on such wages, are entitled to penalties under the Labor Code, and have incurred
25 expenses and attorney's fees in seeking to compel Defendant to fully perform their obligations
26 under state law, all to their respective detriment in an amount that exceeds the jurisdictional
27 minimum of this Court and that will be ascertained according to proof at trial.
28

1 **CAUSE OF ACTION**

2 **VIOLATION OF THE PAGA**

3 **In Violation of Labor Code §§ 2698 *et seq.***

4 **(As to Defendant and Does 1-25, inclusive)**

5 78. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully
6 set forth herein.

7 79. PAGA expressly establishes that any provision of the California Labor Code which
8 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
9 Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or
10 employees for a violation of the California Labor Code may be recovered through a civil action
11 brought by an aggrieved employee on behalf of himself or herself, and other current or former
12 employees.

13 80. On January 2, 2020, Plaintiff, Victor Gonzalez, on behalf of himself and all similarly-
14 situated Aggrieved Employees, submitted a written Notice to the Defendant and the LWDA
15 setting forth the alleged facts and identifying the specific provisions of the Labor Code that he
16 contended were violated by Defendant. On April 3, 2020, Plaintiff, Victor Gonzalez, on behalf
17 of himself and all similarly-situated Aggrieved Employees, submitted a written Amended Notice
18 to the Defendant and LWDA setting forth the alleged facts and identifying the specific provisions
19 of the Labor Code that he contended were violated by Defendant. A true and correct copy of the
20 April 3, 2020, Amended PAGA Notice is attached hereto as **Exhibit A**. More than 65 days have
21 passed since Plaintiff submitted his Amended PAGA Notice and to date, Plaintiff Victor
22 Gonzalez has not received a response from the LWDA, indicating its intent to investigate his
23 claims.
24

25 81. Each of the Plaintiffs is or was a non-exempt employee and they are “Aggrieved
26 Employees” as defined by California Labor Code § 2699(c) in that they are all current or former
27 employees of Defendant, and one or more of the alleged violations was committed against them.
28

Failure to Pay Minimum Wage

82. Plaintiffs, Mercadez Chatman and Liseth Gonzalez worked at Defendant's location in El Cerrito, California. Like many cities in California, El Cerrito mandates a higher minimum wage than the state minimum wage. However, at all times relevant, Defendant only paid Plaintiffs, Chatman and Gonzalez and similarly situated Aggrieved Employees who worked at the El Cerrito location the state minimum wage rather than the minimum wage mandated by the City of El Cerrito.

83. Plaintiff, Arthur Paula worked at Defendant's location in Daly City, California. Like many cities in California, Daly City mandates a higher minimum wage than the state minimum wage. However, at all times relevant, Defendant only paid Plaintiff, Arthur Paula and similarly situated Aggrieved Employees who worked at the Daly City location, the state minimum wage rather than the minimum wage as mandated by Daly City.

84. Plaintiffs allege on information on belief that at all times relevant, Defendant maintained a uniform policy and practice of only paying Plaintiffs and the Aggrieved Employees the state minimum wage, rather than the minimum wage applicable to the cities and/or counties in which they worked. On information and belief, Plaintiffs allege that at all times relevant, Defendant has failed to pay the applicable minimum wage to the Aggrieved Employees working in the following cities and/or counties:

Alameda (see Alameda Municipal Code 4-60);

Cupertino (see Cupertino Municipal Code 3.37);

Daly City: (see Daly City Municipal Code 8.76);

El Cerrito (see El Cerrito Municipal Code 6.95.040);

Fremont (see Fremont Municipal Code 5.30);

Los Angeles – city (see Los Angeles Municipal Code, Ch. XVIII, Art. 7, §§ 187.00 et seq.);

Los Angeles – county (see CA Code of Ordinances 8.100);

Novato (see Novato Municipal Code 2-30);

1 *San Jose* (see San Jose Municipal Code 4.100);

2 *Santa Clara* (see Santa Clara Municipal Code 3.20); and

3 *Santa Rosa* (see Santa Rosa Municipal Code 10-45).

4 85. At all times relevant, Labor Code section 1197 provided in relevant part: “The minimum
5 wage for employees fixed by . . . any applicable state or local law, is the minimum wage to be
6 paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

7 86. Defendant violated Labor Code section 1197 by failing to pay Plaintiffs Mercadez
8 Chatman, Liseth Gonzalez, and Arthur Paula the proper, applicable minimum wage mandated by
9 local laws and ordinances. Plaintiffs allege on information and belief that Defendant violated
10 Labor Code section 1197 by failing to pay the Aggrieved Employees working in the cities and/or
11 counties listed above the proper applicable minimum wage mandated by local laws and
12 ordinances.

13 87. Labor Code section 1194 provides: “Notwithstanding any agreement to work for a lesser
14 wage, any employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
16 of the full amount of this minimum wage or overtime compensation, including interest thereon,
17 reasonable attorney’s fees, and costs of suit.”

18 88. As a result of Defendant’s failure to pay the applicable minimum wage mandated by local
19 law, Plaintiffs and the Aggrieved Employees seek an award of the unpaid minimum wages,
20 including interest thereon, reasonable attorney’s fees, and costs of suit.

21 **Failure to Pay Overtime Compensation**

22 89. Labor Code section 510 provides: “Eight hours of labor constitutes a day’s work. Any
23 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
24 workweek and the first eight hours worked on the seventh day of work in any one workweek shall
25 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
26 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
27 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
28

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

3 90. Section 3 of IWC Order No. 5-2001, which applies to Defendant’s industry, likewise
4 requires payment of overtime compensation consistent with Labor Code section 510.

5 91. As a result of Defendant’s failure to pay Plaintiffs, Mercadez Chatman, Liseth Gonzalez,
6 Arthur Paula and the Aggrieved Employees working in the cities and/or counties listed above the
7 proper, applicable minimum wage mandated by local laws, at all times relevant Defendant
8 likewise failed to compensate them at the applicable overtime rates of pay when they worked
9 more than eight (8) hours in a workday or forty (40) hours in a workweek. On information and
10 belief, Plaintiffs allege that Defendant’s failure to compensate them and the Aggrieved
11 Employees at the proper, applicable overtime rates of pay was a result of Defendant’s policy of
12 only paying the state minimum wage, rather than the minimum wages mandated by the cities
13 and/or county in which they worked.

14 92. Moreover, as alleged above, Plaintiffs and the Aggrieved Employees performed work
15 while off-the-clock while engaged in work-related communications every workweek during
16 Plaintiffs’ employment with Defendant, but Defendant failed to compensate them for the time
17 spent working while off-the-clock. As a result, Defendant failed to pay overtime compensation
18 due to Plaintiffs and the Aggrieved Employees for all hours worked, including overtime, when
19 their off-the-clock communications caused their number of hours worked to exceed eight (8)
20 hours in a workday or forty (40) hours in a workweek.

21 93. Plaintiff, Victor Gonzalez worked more than eight (8) hours per day and/or more than
22 forty (40) hours in a workweek in each of the following pay periods: September 9, 2019 to
23 September 22, 2019; September 23, 2019 to October 6, 2019; October 7, 2019 to October 20,
24 2019; October 21, 2019 to November 3, 2019; and November 4, 2019 to November 17, 2019. As
25 a result of Defendant’s failure to track and record his off-the-clock communications, and to
26 compensate him for that worked time, Defendant failed to pay him overtime compensation he
27 was owed for his off-the-clock communications on workdays and workweeks when he worked
28

1 more than eight (8) hours per day and/or more than forty (40) hours in a workweek. As a result,
2 Defendant owes Mr. Gonzalez unpaid overtime in an amount to be determined according to proof
3 at trial.

4 94. Plaintiff, Mercadez Chatman worked more than eight (8) hours per day and/or more than
5 forty (40) hours in a workweek in each of the following pay periods: November 27, 2017 to
6 December 10, 2017; December 11, 2017 to December 17, 2017; May 7, 2018 to May 20, 2018;
7 December 3, 2018 to December 16, 2018; December 31, 2018 to January 13, 2019; January 14,
8 2019 to January 27, 2019; March 11, 2019 to March 24, 2019; March 25, 2019 to April 7, 2019;
9 April 8, 2019 to April 21, 2019; April 22, 2019 to May 5, 2019; May 6, 2019 to May 19, 2019;
10 May 20, 2019 to June 2, 2019; June 17, 2019 to June 30, 2019; July 15, 2019 to July 28, 2019;
11 July 29, 2019 to August 11, 2019; August 12, 2019 to August 25, 2019; August 26, 2019 to
12 September 8, 2019; and September 9, 2019 to September 22, 2019. She may have worked more
13 than eight (8) hours per day and/or more than forty (40) hours in a workweek in additional pay
14 periods, but Defendant has not provided her copies of itemized wage statements for all the pay
15 periods she worked during the statutory period. As a result of Defendant's failure to properly
16 track and record her off-the-clock communications, Defendant failed to pay her overtime
17 compensation she was owed for her off-the-clock communications on workdays and workweeks
18 when she worked more than eight (8) hours per day and/or more than forty (40) hours in a
19 workweek. As a result, Defendant owes Plaintiff, Chatman unpaid overtime in an amount to be
20 determined according to proof at trial.

22 95. Plaintiffs allege on information and belief that the Aggrieved Employees also performed
23 work while off the clock and had similarly engaged in business-related communications with
24 coworkers, managers and supervisors, but that Defendant failed to record or compensate them for
25 the time that they worked while off-the-clock. Plaintiffs allege on information and belief that
26 the Aggrieved Employees worked more than eight (8) hours in a workday and more than forty
27 (40) hours in a workweek during their employment with Defendant. Plaintiffs allege on
28 information and belief that as a result of Defendant's failure to track and record the Aggrieved

1 Employees' off-the-clock communications, and to compensate them for that time worked
2 Defendant failed to pay the Aggrieved Employees overtime compensation for their off-the-clock
3 communications on workdays and workweeks when they worked more than eight (8) hours per
4 day and/or more than forty (40) hours in a workweek. As a result, Defendant owes the Aggrieved
5 Employees unpaid overtime in an amount to be determined according to proof at trial.

6 96. Defendant knew or should have known that Plaintiff and the Aggrieved Employees
7 worked overtime hours.

8 97. Labor Code section 1194 provides: "Notwithstanding any agreement to work for a lesser
9 wage, any employee receiving less than the legal minimum wage or the legal overtime
10 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
11 of the full amount of this minimum wage or overtime compensation, including interest thereon,
12 reasonable attorney's fees, and costs of suit."

13 98. As a result of Defendant's failure to pay overtime compensation to Plaintiffs and the
14 Aggrieved Employees, they seek an award of all unpaid overtime compensation owed to them by
15 Defendant, including interest thereon, reasonable attorney's fees, and costs of suit.
16

17 **Failure to Provide Meal Periods**

18 99. Labor Code section 226.7 prohibits employers from requiring an employee to
19 work during any meal or rest or recovery period mandated by law.

20 100. Labor Code section 512 provides in relevant part: "An employer shall not employ
21 an employee for a work period of more than five hours per day without providing the employee
22 with a meal period of not less than 30 minutes An employer shall not employ an employee
23 for a work period of more than 10 hours per day without providing the employee with a second
24 meal period of not less than 30 minutes"

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

1 102. Section 11 of IWC Order No. 5-2001, which applies to Defendant's industry,
2 requires employers to provide its employees meal break periods consistent with Labor Code
3 section 512.

4 103. Defendant did not provide meal periods to Plaintiffs and the Aggrieved Employees,
5 in violation of Labor Code sections 226.7, 512, 1198, and IWC Order No. 5-2001.

6 104. Throughout the relevant period, Plaintiffs and the Aggrieved Employees regularly
7 worked for more than five (5) hours during a work period without being provided the mandatory
8 thirty (30) minute meal period for each five (5) hours of work as required by California law, and
9 without being compensated for unprovided meal periods. (*See Brinker Restaurant Corp., et al. v.*
10 *Superior Court* (2012) 52 Cal. 4th 1004, 1040-41 ["The employer satisfies this obligation if it
11 relieves its employees of all duty, relinquishes control over their activities and permits them a
12 reasonable opportunity to taken an uninterrupted 30-minute break, and does not impede or
13 discourage them from doing so... [A] first meal period [is required] no later than the end of an
14 employee's fifth hour of work, and a second meal period [is required] no later than the end of an
15 employee's 10th hour of work.").

16 105. As alleged herein, Defendant discouraged, dissuaded, impeded, and failed to
17 provide Plaintiffs and the Aggrieved Employees with duty free, timely, uninterrupted meal
18 periods of not less than thirty (30) minutes as required by the Labor Code and IWC Order No. 5-
19 2001. Moreover, at no time did Plaintiffs or the Aggrieved Employees sign a valid meal break
20 waiver.
21

22 106. Despite its failure to provide compliant meal break periods to Plaintiffs and the
23 Aggrieved Employees, Defendant failed to pay the one (1) hour of premium pay equal to their
24 regular hourly rate of pay to which Plaintiffs and the Aggrieved Employees were lawfully entitled
25 for each day Defendant failed to provide a compliant meal break period.

26 107. As a result of Defendant's failure to provide meal periods and failure to provide
27 "premium pay" for unprovided meal break periods to Plaintiffs and the Aggrieved Employees,
28 Plaintiffs and the Aggrieved Employees seek an award of all unpaid "premium pay" Defendant

owes them in an amount that exceeds the jurisdictional minimum of this Court to be determined according to proof at trial.

Failure to Provide Rest Periods

108. Labor Code section 226.7 prohibits employers from requiring an employee to work during any meal or rest or recovery period mandated by law.

109. Section 12 of IWC Order No. 5-2001, which applies to Defendant's industry, requires employers to permit all employees to take rest periods of at least ten (10) minutes net rest time per four (4) hours worked or major fraction thereof. (*See also, Brinker, supra*, 53 Cal. 4th at 1029 ("Employees are entitled to 10 minutes of rest for shift from three and one-half to six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.")).

110. Throughout the statutory period, Plaintiffs and the Aggrieved Employees were not permitted by Defendant to take a full, uninterrupted ten-minute rest period for every four (4) hours worked or major portion thereof.

111. Despite failing to provide compliant rest break periods to Plaintiffs and the Aggrieved Employees, Defendant failed to pay one (1) hour of premium pay to Plaintiffs and the Aggrieved Employees for each day Defendant failed to provide a rest break period.

112. As a result of Defendant's failure to provide rest periods and failure to provide "premium pay" for unprovided rest periods to Plaintiffs and the Aggrieved Employees, Plaintiffs and the Aggrieved Employees seek an award of all unpaid "premium pay" Defendant owes them in an amount that exceeds the jurisdictional minimum of this Court to be determined according to proof at trial.

Failure to Maintain Accurate Time Records

113. Labor Code section 1174 provides in relevant part that every person employing labor in this state shall "[k]eep, at a central location in the state 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."

1 114. At all times relevant, Defendant willfully failed to keep accurate payroll records
2 showing the hours worked and wages earned daily by Plaintiffs and the Aggrieved Employees.

3 115. Labor Code section 1174.5 provides that any employer who willfully fails to
4 maintain the records required by Labor Code section 1174 shall be subject to a civil penalty of
5 five hundred dollars.

6 116. As a result of Defendant's violation of Labor Code section 1174, Plaintiffs and the
7 Aggrieved Employees seek an award of penalties pursuant to Labor Code section 1174.5.

8 **Failure to Pay Wages Twice Per Month**

9 117. Labor Code section 204 provides in relevant part that "[a]ll wages, other than those
10 mentioned in sections 201, 202, 204.1, or 204.2, earned by any person in any employment, are
11 due and payable twice during each calendar month, on days designated in advance by the
12 employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of
13 any calendar month shall be paid for between the 16th and the 26th day of the month during
14 which the labor was performed, and labor performed between the 16th and the last day, inclusive,
15 of any calendar month, shall be paid for between the 1st and 10th day of the following month."

16 118. As alleged above, Defendant failed to pay Plaintiffs and the Aggrieved Employees
17 all wages earned—including the applicable minimum wage as mandated by local laws and
18 ordinances, regular and overtime compensation—for all labor performed twice during each
19 calendar month, in violation of Labor Code section 204.

20 119. Labor Code section 210 states in relevant part: "In addition to, and entirely
21 independent and apart from, any other penalty provided in this article, every person who fails to
22 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11,
23 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one
24 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
25 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
26 employee, plus 25 percent of the amount unlawfully withheld."

27 120. Labor Code section 218 states in relevant part: "Nothing in this article shall limit
28

1 the right of any wage claimant to sue directly or through an assignee for any wages or penalty
2 due him under this article.”

3 121. As a result of Defendant’s violation of Labor Code section 204, Plaintiffs and the
4 Aggrieved Employees seek an award of the unpaid wages and penalties Defendant owes them in
5 an amount that exceeds the jurisdictional minimum of this Court to be determined according to
6 proof at trial.

7 **Failure to Provide Accurately Itemized Wage Statements**

8 122. At all times relevant, Labor Code section 226(a) required employers to “furnish
9 each of [its] employees, either as a detachable part of the check, draft, or voucher paying the
10 employee’s wages, or separately when wages are paid by personal check or cash, an itemized
11 statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee,
12 ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and
13 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
14 hours worked at each hourly rate by the employee.”

15 123. As alleged above, Defendant violated Labor Code section 226(a) by failing to
16 provide accurate itemized wage statements to Plaintiffs and the Aggrieved Employees.

17 124. Labor Code section 226(e)(1) provides: “An employee suffering injury as a result
18 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
19 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
20 a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
21 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
22 to an award of costs and reasonable attorney’s fees.”

23 125. Labor Code section 226(h) provides: “An employee may also bring an action for
24 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
25 reasonable attorney’s fees.”

26 126. As a result of Defendant’s violation of Labor Code section 226, Plaintiffs and the
27 Aggrieved Employees seek an award of penalties pursuant to Labor Code section 226(e)(1), and
28

1 injunctive relief, attorneys' fees, and costs pursuant to Labor Code section 226(h).

2 **Failure to Reimburse Work Expenses**

3 127. Labor Code Section 2802 provides that an employer shall indemnify his or her
4 employees for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties.

6 128. As alleged above, Defendant engages and engaged in the routine practice requiring
7 Plaintiffs and the Aggrieved Employees to use their own personal cellphones to keep up with
8 internal business and work-related communications. An employer that knows or has reason to
9 know that an employee has incurred work-related expenses must reimburse the employee, even
10 if the employee does not request reimbursement. However, Defendant has not paid Plaintiffs and
11 the Aggrieved Employees any cell phone allowance, nor have they reimbursed them for the
12 expenses they have incurred for the daily imposition and use of their personal cellphones in the
13 discharge of their work-related duties, in violation of Labor Code Section 2802.

14 129. As a result of Defendant's violation of Labor Code section 2802, Plaintiffs and the
15 Aggrieved Employees seek reimbursement for all business-related expenses they have incurred
16 working for Defendant in an amount that exceeds the jurisdictional minimum of this Court and
17 to be determined according to proof at trial, with interest thereon.

18 **Failure to Timely Pay Compensation Upon Discharge or Quit**

19 130. Labor Code section 201 provides that if an employer discharges an employee, the
20 wages earned and unpaid at the time of discharge are due and payable immediately.

21 131. Labor Code section 202 provides that if employees not having a written contract
22 for a definite period quits their employment, their wages shall become due and payable no later
23 than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention
24 to quit, in which case the employee is entitled to their wages at the time of quitting.

25 132. As alleged above, Defendant willfully violated Labor Code section 201 with
26 respect to Plaintiffs by failing to pay them all wages owed immediately on the date Defendant
27 discharged them.
28

1 133. On information and belief, Plaintiffs allege that Defendant willfully violated
2 Labor Code sections 201 and 202 with respect to the Aggrieved Employees by failing to timely
3 pay them all wages owed in accordance with those provisions.

4 134. Labor Code section 203 provides that an employer who willfully fails to pay,
5 without abatement or reduction, in accordance with sections 201 and 202, any wages of an
6 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
7 from the due date thereof at the same rate until paid or until an action therefore is commenced,
8 but the wages shall not continue for more than 30 days.

9 135. Labor Code section 218 states in relevant part: “Nothing in this article shall limit
10 the right of any wage claimant to sue directly or through an assignee for any wages or penalty
11 due him under this article.”

12 136. As a result of Defendant’s violation of Labor Code sections 201 and 202, Plaintiffs
13 and the Aggrieved Employees seek an award of all unpaid wages in an amount that exceeds the
14 jurisdictional minimum of this court to be determined according to proof at trial, and “waiting
15 time penalties” pursuant to Labor Code section 203.
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment as follows:

- 19 1. For nominal damages;
- 20 2. For compensatory damages;
- 21 3. For unpaid wages;
- 22 4. For unpaid overtime compensation;
- 23 5. For equitable relief in the nature of declaratory relief, restitution of all monies due to
24 Plaintiffs, and accounting;
- 25 6. For penalties pursuant to Labor Code sections 203, 210, 226, and 1174.5, and 2699;
- 26 7. For “premium pay” pursuant to Labor Code section 226.7;
- 27 8. For liquidated damages pursuant to Labor Code section 1194.2;
- 28 9. For injunctive relief;

- 1 10. For interest accrued to date;
2 11. For reasonable attorneys' fees pursuant to Labor Code section;
3 12. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699; and
4 13. For all such other and further relief that the Court may deem just and proper.

5
6 DATED: September 1, 2020

WHITEHEAD EMPLOYMENT LAW

7
8
9 By: 

JACOB N. WHITEHEAD, ESQ.

Attorney for Plaintiffs and similarly-situated
Aggrieved Employees
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EXHIBIT A



April 3, 2020

Via Online Filing

California Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified Mail (Return Receipt Requested)

CSC – Lawyers Incorporating Service
Registered Agent for
MOD Super Fast Pizza (California), LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Scott Svenson, CEO
MOD Super Fast Pizza (California), LLC
2035 158th Ct NE, Suite 200
Bellevue, WA 98008

Re: Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the “PAGA”)

Dear Sir or Madam:

As you were prior notified on January 2, 2020, Plaintiff, Victor Gonzalez (“Plaintiff”) has retained our firm to represent him and other similarly-situated current and former employees of MOD Super Fast Pizza (California), LLC, a Delaware Limited Liability Company (“Defendant”) for alleged violations of the California Labor Code. Defendant currently employs Plaintiff and currently or formerly has employed other similarly situated employees at its fast casual pizza restaurant stores located throughout California (collectively, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees work or worked in non-salaried associate and/or store management positions (hereinafter, “Covered Positions”). This amended PAGA notice formally serves to inform Defendant of Plaintiff’s intent to file a PAGA class action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief for Defendant’s failure to pay for unreimbursed expenses, failure to provide compliant rest periods and meal break periods, failure to timely pay all wages due, failure to provide accurate time records, failure to issue accurately itemized wage statements, failure to pay all wages due upon termination or separation of employment, failure to pay the applicable minimum wage, and failure to pay the applicable overtime rate during the relevant time period. Based upon these violations, Defendant violated numerous provisions of California’s Labor Code including violations of §§’s 201-202, 204, 226 (a), 226.7, 510, 512, 1174, 1194, 1197, and 2802 as further detailed herein below.

Plaintiff is informed and believes that said violations are ongoing, systematic and uniform. If Defendant fails to cure the alleged violations, as stated above, Plaintiff will bring an action against

Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Facts and Theories to Support the Alleged Labor Code Violations

Plaintiff and the Aggrieved Employees currently or formerly work or worked for Defendant at its MOD Pizza retail dining establishments located throughout the state of California during the relevant period. Plaintiff and the Aggrieved Employees held non-salaried, non-exempt associate and store management positions at the restaurants (“Covered Positions”) and perform or performed a variety of duties that requires or required them to daily interact with managers, supervisors, service providers, and other MOD Pizza team members during their scheduled shifts.

As a matter of routine and daily practice, Plaintiff and the Aggrieved Employees are or were required to use their personal cell phones in conducting their daily duties and work-related communications. The MOD Pizza stores were not equipped with phones. Employees and managers were required to regularly use their personal cell phones to communicate with one another via phone calls and text messages. Personal cell phone use was also required to order inventory for their stores. Plaintiff and the Aggrieved Employees were thus required to attend to work-related phone calls from other Mod Pizza team members and outside vendors and suppliers during Plaintiff and the Aggrieved Employees’ lunches and rest breaks, as well as when Plaintiff and the Aggrieved Employees were at home and otherwise, completely off the clock. These off-the-clock, work-related communications were never logged or recorded as time worked by the Defendant, despite being encouraged, and even required by Defendant. Furthermore, Plaintiff and the Aggrieved Employees have never been paid for such off-the clock, work-related communications. In addition, at no time has Defendant reimbursed Plaintiffs and the similarly situated Aggrieved Employees for the use of their personal cell phones, which are routinely used and required in the discharge of their duties.

Plaintiff and the Aggrieved Employees are/were compensated at an hourly rate. They work very long hours during their scheduled shifts in order to make as many sales as possible and to keep up with all

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes, each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

the orders and store upkeep. Because of the policies requiring that Plaintiff and the Aggrieved Employees rely on their personal cell phones to communicate with each other and outside suppliers, any rest breaks and lunch breaks were breaks in name only. In fact, actual rest and lunch breaks were not even provided to employees. Although Defendant likely has a rest break and lunch break policy, the MOD Pizza stores were understaffed, and because of the high pressure of keeping up with all the orders, store maintenance, and inventory in order to keep their jobs, in reality and practice any such rest break and meal break policies are ignored and literally never enforced. When combined with the simultaneous requirement that Plaintiff and the Aggrieved Employees are required to use their personal cell phones as store phones so that they can always be available the effect is that all employees and managers are forced to ignore any "break policy," to work through whatever breaks are provided, and to work more than five hours without taking a break. Defendant's managers and supervisors understand all too well and thus any such "policy" is virtually never enforced. Indeed, it is actively contradicted. However, Defendant has failed to pay Plaintiff and the Aggrieved Employees premium pay wages to which they are lawfully entitled, equal to one hour of their regular rate of pay, in lieu of such missed rest periods and meal breaks.

As a result of Defendant's failure to provide compliant rest periods and meal breaks, Plaintiff and the Aggrieved Parties have not been, and are not presently being, timely paid all their rightfully earned wages by law and are not receiving accurately itemized wage statements reflecting the accurate hours worked, nor their requisite premium pay wages.

Thus, Defendant not only violated Labor Code §204 by failing to timely pay all wages twice monthly, when former Aggrieved Employees' employment with Defendant ended, Defendant failed to pay them all of their earned wages as described above, immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which such Aggrieved Employees are entitled.

At all times relevant, Labor Code § 200(a) defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Labor Code § 200(b) defines "labor" as all "work" or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment."

At all times relevant, Labor Code § 218 provides that "nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article."

At all times relevant, Labor Code § 204 provides that all wages, other than those mentioned in sections 201, 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.

At all times relevant, Labor Code § 1174 was in force and effect. Section 1174 provides, that every person employing labor in this state shall "... Keep, at a central location in the state 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.”

At all times relevant, Labor Code sections 1194 and 1197 were in force and effect. Subparagraph (a) of section 1194 provides in relevant part that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Section 1197 provides in relevant part: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Plaintiff worked at Defendant’s location in the city of El Cerrito. Like many cities in California, El Cerrito has a higher minimum wage than the state minimum wage. However, at all times relevant, Defendant paid Plaintiff the state minimum wage rather than El Cerrito’s minimum wage.

Plaintiff alleges on information on belief that at all times relevant, Defendant has had a policy of paying Plaintiff and the Aggrieved Employees no less than the state minimum wage, rather than the minimum wage applicable to the city and/or county in which they worked. On information and belief, Plaintiff alleges that at all times relevant, Defendant has failed to pay the applicable minimum wage to the Aggrieved Employees working in the following cities and/or counties:

Alameda (see Alameda Municipal Code 4-60);
Cupertino (see Cupertino Municipal Code 3.37);
Daly City: (see Daly City Municipal Code 8.76);
El Cerrito (see El Cerrito Municipal Code 6.95.040);
Fremont (see Fremont Municipal Code 5.30);
Los Angeles – city (see Los Angeles Municipal Code, Ch. XVIII, Art. 7, §§ 187.00 et seq.);
Los Angeles – county (see CA Code of Ordinances 8.100);
Novato (see Novato Municipal Code 2-30);
San Jose (see San Jose Municipal Code 4.100);
Santa Clara (see Santa Clara Municipal Code 3.20); and
Santa Rosa (see Santa Rosa Municipal Code 10-45).

At all times relevant, Labor Code section 510 was in force and effect. Section 510 provides in relevant part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in 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 for pay for an employee.” At all times relevant, Defendant failed to compensate Plaintiff at the applicable overtime rate when she worked overtime.

Plaintiff alleges on information and belief that at all relevant times, Defendant failed to compensate the Aggrieved Employees working in the cities and/or counties listed above at the applicable overtime rate. On information and belief, Plaintiff alleges that Defendant’s failure to compensate those Aggrieved Employees at the applicable overtime rate resulted from Defendant’s policy of paying no less than the state minimum wage, rather than the minimum wage applicable to the city and/or county in which they worked.

Here, Defendants violated Labor Code 201-202, 204, 226 (a), 226.7, 510, 512, 1174, 1194, 1197, and 2802. As a result of their unlawful practices, including failure to provide compliant rest breaks and meal breaks; failure to pay them one hour’s premium pay wage for each missed rest break or meal break;

failure to record all hours worked, including tracking and logging work-related communications when employees are off the clock, failure to pay employees separately for all hours worked, failure to timely pay wages twice monthly, each calendar month worked; failure to reimburse for cell phone expenses incurred in the discharge of their duties; failure to provide accurately itemized wage statements; failure to pay all wages due upon termination of employment; failure to pay the applicable minimum wage, and failure to pay the applicable overtime rate, Defendants have failed to pay the Plaintiff and Aggrieved Employees for all work related expenses incurred and for all labor performed.

A. Defendant Failed to Furnish Accurate Wage Statements to the Aggrieved Employees.

At all times relevant, Labor Code § 226(a) requires Defendants to “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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.”

Here, Defendant violated Labor Code § 226 (a). Defendant had a uniform policy and practice of failing to pay its workers premium pay wages for missed rest period and meal breaks, and failed to properly compensate the Aggrieved Employees for hours worked while off the clock and/or overtime worked to which the Plaintiff and Aggrieved Employees in the Covered Positions are and were lawfully entitled during the relevant period.

Resultantly, Plaintiff and the Aggrieved Employees shall also seek injunctive relief pursuant to Labor Code Section 226 (g) as well as their attorneys’ fees, interest, expenses and costs of suit.

B. Defendant Failed to Reimburse Aggrieved Employees for their Expenses.

California Labor Code Section 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

As discussed above, Defendant engages or engaged in the routine practice requiring Plaintiff and the Aggrieved Employees to use their personal cellphones to regularly communicated with other employees, supervisors, managers, and outside suppliers, but Defendant has not and does not pay the Aggrieved Employees a cell phone allowance, nor does it or has it reimbursed them for the daily imposition and required use of their personal cellphones to communicate in the discharge of their work-related duties in violation of Labor Code Section 2802.

In violation of Labor Code Section 2802, Defendant has failed to reimburse Plaintiff and the Aggrieved Employees for their expenses. Pursuant to Section 2802, the Plaintiff and the Aggrieved Employees are also entitled to recover their attorneys’ fees, interest, expenses and costs of suit.

C. Defendant Has Failed to Maintain Records of All Hours Worked by Plaintiff and the Aggrieved Employees

Labor Code § 1174 provides, that every person employing labor in this state shall “... Keep, at a central location in the state 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.”

As stated, Defendant’s managers and supervisors required Plaintiff and the Aggrieved Employees to be always available by requiring them to use their personal cell phones for work-related phone calls. Defendant’s managers understood that this meant Plaintiff and the Aggrieved Employees regularly took work-related phone calls on their personal cell phones when they are/were at home and off the clock. This time spent by Plaintiff and the Aggrieved Employees attending to work-related duties is never recorded, tracked, nor are/were Plaintiff and the Aggrieved Employees compensated for such interruptions of their personal off the clock time.

D. Defendant Has Failed to Pay Plaintiff and the Aggrieved Employees Separately For Each Hour Worked at the Legal Rate

Pursuant to Labor Code Section 1194, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

As described supra, Defendants’ managers and supervisors required and understood that employees routinely used their cellphones to make work-related communications with each other and with outside suppliers, even when the employees are at home and off the clock. As stated, Defendants have failed to track or record the time in which they are intruding and engaging employees about work-related issues when they are off the clock. Moreover, Plaintiff and the Aggrieved Employees have not ever been compensated for when they are responding to inquiries and thus are working off the clock for free.

E. Defendant Has Failed to Timely Pay Wages

At all times relevant, Labor Code § 204 provides that all wages, other than those mentioned in sections 201, 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.

As discussed supra, Defendant failed to pay Plaintiff and the Aggrieved Employees all wages due for labor performed twice during each calendar month, especially with regard to the premium pay to which they are entitled.

F. Defendant Failed to pay all Wages Due to the Aggrieved Employees Upon Separation or Termination of Employment.

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the

employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 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 therefore is commenced, but the wages shall not continue for more than 30 days.

Here, Defendant has violated Labor Code §§ 201(a) and 204. When Plaintiff and those Aggrieved Employees' whose employment with Defendants formerly ended, Defendant failed to pay them all of their earned wages as detailed above, immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which Plaintiff and such Aggrieved Employees are entitled under Labor Code Section 203.

To date, as set forth in detail above, Defendant has failed to pay the Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

G. Defendant Failed to Pay the Aggrieved Employees the Applicable Minimum Wage

At all times relevant, Labor Code sections 1194 and 1197 were in force and effect. Subparagraph (a) of section 1194 provides in relevant part that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Section 1197 provides in relevant part: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

Plaintiff worked at Defendant's location in the city of El Cerrito. Like many cities in California, El Cerrito has mandated a higher minimum wage than the state minimum wage. However, at all times relevant, Defendant paid Plaintiff the state minimum wage rather than in accordance with El Cerrito's minimum wage ordinance.

Plaintiff alleges on information on belief that at all times relevant, Defendant has had a policy of paying Plaintiff and the Aggrieved Employees no less than the state minimum wage, rather than the minimum wage applicable to the city and/or county in which they worked. On information and belief, Plaintiff alleges that at all times relevant, Defendant has failed to pay the applicable minimum wage to the Aggrieved Employees working in the following cities and/or counties:

Alameda (see Alameda Municipal Code 4-60);
Cupertino (see Cupertino Municipal Code 3.37);
Daly City: (see Daly City Municipal Code 8.76);
El Cerrito (see El Cerrito Municipal Code 6.95.040);
Fremont (see Fremont Municipal Code 5.30);
Los Angeles – city (see Los Angeles Municipal Code, Ch. XVIII, Art. 7, §§ 187.00 *et seq.*);
Los Angeles – county (see CA Code of Ordinances 8.100);
Novato (see Novato Municipal Code 2-30);
San Jose (see San Jose Municipal Code 4.100);
Santa Clara (see Santa Clara Municipal Code 3.20); and

Santa Rosa (see Santa Rosa Municipal Code 10-45).

H. Defendant Failed to Pay the Aggrieved Employees the Applicable Overtime Rate

At all times relevant, Labor Code section 510 was in force and effect. Section 510 provides in relevant part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in 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 for pay for an employee.” At all times relevant, Defendant failed to compensate Plaintiff at the applicable overtime rate when she worked overtime.

Plaintiff alleges on information and belief that at all relevant times, Defendant failed to compensate the Aggrieved Employees working in the cities and/or counties listed above at the applicable overtime rate. On information and belief, Plaintiff alleges that Defendant’s failure to compensate those Aggrieved Employees at the applicable overtime rate resulted from Defendant’s policy of paying no less than the state minimum wage, rather than the minimum wage applicable to the city and/or county in which they worked.

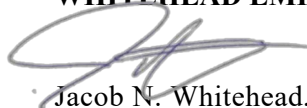
Conclusion

Defendant has violated the foregoing provisions of the California Labor Code. Plaintiff requests the LWDA to investigate the above allegations and provide notice of the allegations under PAGA’s provisions. Alternatively, Plaintiff request the LWDA to inform them if it does not intend to investigate these violations, so they may bring an action under the PAGA for the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



* Jacob N. Whitehead, Esq.

JNW/dlp