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

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

Plaintiff,

vs.

SISCO ENTERPRISES, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Electronically Filed
May 7, 2020
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By: Brenda Johnson, Deputy

Case No.: CVCS20-0000772

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

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

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

9 **THE PARTIES**

10 6. Plaintiff Stephen Arrowsmith is a resident of Yuba City, in Sutter County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Delivery Driver
12 from approximately April 2019 to September 21, 2019. Plaintiff worked for Defendants at
13 their Yuba City, California Round Table Pizza restaurant located at 1278 Stabler Lane, Yuba
14 City, California 95993. During his employment, Plaintiff typically worked six (6) hours or
15 more per day, six (6) days per week, from 4:00 p.m. to 11:00 p.m. or 12:00 a.m. Plaintiff
16 earned approximately \$12.00 per hour, in addition to tips. His job duties included, without
17 limitation, delivering food, cleaning the dining premises and bathrooms, washing plates and
18 dishes as needed, and closing the restaurant.

19 7. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
21 their hire or during their employment. On further information and belief, Defendants’ dispute
22 resolution policy and/or arbitration agreement was and is both procedurally and substantively
23 unconscionable. Specifically, Defendants presented new hires with an “Arbitration
24 Agreement” during the onboarding process, which had to be reviewed and signed
25 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
26 several documents presented to new employees for signature during the orientation process.
27 Also, employees did not have a meaningful opportunity to negotiate the terms of the
28 Arbitration Agreement. Rather, it was provided to Defendants’ employees for them to sign on

1 a take-it or leave-it basis at the time they were hired, along with other on-boarding documents.
2 Further, Defendants did not set forth in the agreement or otherwise provide employees with
3 the rules which will govern the arbitration, instead forcing employees to seek this information
4 out on their own.

5 8. SISCO ENTERPRISES, INC. was and is, upon information and belief, a
6 California corporation, and at all times hereinafter mentioned, an employer whose employees
7 are engaged throughout this county and the State of California.

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

12 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of SISCO ENTERPRISES, INC. at all relevant
14 times.

15 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, SISCO
17 ENTERPRISES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "ROUND
18 TABLE"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
19 in concert with, each of the other co-Defendants and was acting within the course and scope of
20 such agency, employment, joint venture, or concerted activity with legal authority to act on
21 the others' behalf. The acts of any and all Defendants were in accordance with, and represent,
22 the official policy of Defendants.

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

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

omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

14. Defendants own and operate approximately 17-23 Round Table Pizza restaurant franchises in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Chico, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

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

17. Defendants continue to employ non-exempt or hourly paid employees in California.

18. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
4 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
5 were not recorded.

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

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

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

23 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
26 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
27 and permitted to take a compliant rest period. In violation of the California Labor Code,
28 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take

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

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

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

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

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

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that they were prohibited from issuing instruments for the payment of
27 wages that were not payable in cash on demand, without discount and with authorization, but
28 did so, in violation of the California Labor Code.

1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
3 to the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
6 to payment of wages as designated by statute. In violation of the California Labor Code,
7 Defendants secretly paid Plaintiff and/or other non-party Aggrieved Employees lower wages
8 than required by statute while purporting to pay them proper wages.

9 31. Plaintiff is informed and believes, and thereon alleges, that at all time herein
10 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
11 expenses Plaintiff and other non-party Aggrieved Employees incurred obtaining mandatory
12 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that other non-party Aggrieved Employees were entitled to suitable
15 seating and/or were entitled to sit when it did not interfere with the performance of their duties
16 and also have seats nearby to use during a lull in tasks that do require moving about or
17 standing.

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that other non-party Aggrieved Employees were entitled to be paid
20 reporting time pay when they reported to work for their scheduled shift but were put to work
21 for less than half of the regular schedule. In violation of the California Labor Code,
22 Defendants did not pay other non-party Aggrieved Employees all reporting time pay due.

23 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive reimbursement for all business-related expenses and costs they incurred during the
26 course and scope of their employment and that they did not receive reimbursement of
27 applicable business-related expenses and costs incurred.

28 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of their employment with Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly, and intentionally failed to do so.

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

37. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

39. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

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

- (a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code

1 alleged to have been violated, including the facts and theories to support
2 the alleged violations.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
7 employer and the aggrieved employee by certified mail that it does not
8 intend to investigate the alleged violation within sixty (60) calendar
9 days of the postmark date of the Employee's Notice. Upon receipt of
10 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
11 five (65) calendar days of the postmark date of the Employee's Notice,
12 the aggrieved employee may commence a civil action pursuant to
13 California Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

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

19 (a) The aggrieved employee or representative shall give written notice by
20 online filing to the LWDA and by certified mail to the employer of the
21 specific provisions of the California Labor Code alleged to have been
22 violated (other than those listed in Section 2699.5), including the facts
23 and theories to support the alleged violation.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(c) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).

27 (c) The employer may cure the alleged violation within thirty-three (33)
28 calendar days of the postmark date of the notice. The employer shall

1 give written notice by certified mail within that period of time to the
2 aggrieved employee or representative and the agency if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the employee may commence a
6 civil action pursuant to Section 2699.

7 42. On February 25, 2020, Plaintiff provided written notice by online filing to the
8 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-774695-20. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants dated February 25, 2020, is attached hereto as
15 "Exhibit 1."

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

19 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
20 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223,
22 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

23 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
4 as a private attorney general, seeks assessment and collection of civil penalties under Labor
5 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
6 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
7 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
8 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
9 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
10 IWC wage order.

11 46. Defendants, at all times relevant to this complaint, were employers or persons
12 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
13 Employees’ rights by violating various sections of the California Labor Code as set forth
14 above.

15 47. As set forth below, Defendants have violated numerous provisions of both the
16 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
17 Order.

18 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
19 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
20 private attorney general, seeks assessment and collection of civil penalties for himself, all
21 other non-party Aggrieved Employees, and the State of California against Defendants for
22 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223,
23 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

24 **FIRST CAUSE OF ACTION**

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

26 **(Against all Defendants)**

27 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 50. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 212, 213,
4 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor
5 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
6 penalties for violations of those Labor Code sections not found in section 2699.5, including
7 sections 516, 1182.12, and 2810.5.

8 51. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
11 wage order for Defendants’ failure to compensate Plaintiff and other
12 non-party Aggrieved Employees with all required overtime pay, as set
13 forth below;
- 14 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
15 applicable IWC wage order for Defendants’ failure to compensate
16 Plaintiff and other non-party Aggrieved Employees with at least
17 minimum wages for all hours worked as set forth below;
- 18 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
19 applicable IWC wage order for Defendants’ failure to provide Plaintiff
20 and other non-party Aggrieved Employees with meal periods, as set
21 forth below;
- 22 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
23 IWC wage order for Defendants’ failure to authorize and permit
24 Plaintiff and other non-party Aggrieved Employees to take rest periods,
25 as set forth below;
- 26 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
27 wage order for failure to provide accurate and complete wage statements
28 to Plaintiff and other non-party Aggrieved Employees, as set forth

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- below;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;
- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization as set forth below;
- (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to Plaintiff and/or other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying Plaintiff and/or other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 222.5 for failure to compensate Plaintiff and other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing as set forth below;
- (m) Violation of Labor Code section 1198 for failing to provide suitable seating to other non-party Aggrieved Employees, as set forth below;
- (n) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses

1 necessarily incurred, as set forth below, as set forth below; and

- 2 (p) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
3 provide written notice of information material to Plaintiff's and other
4 non-party Aggrieved Employees' employment with Defendants, as set
5 forth below.

6 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

27 56. California Labor Code section 510 codifies the right to overtime compensation
28 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)

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

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

11 58. First, during the relevant time period, Defendants had, and continue to have, a
12 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
13 party Aggrieved Employees from recording hours worked that were outside of their scheduled
14 shifts in order to limit the amount of overtime employees could accrue. Plaintiff and other
15 non-party Aggrieved Employees were forced to work off-the-clock performing tasks before
16 and after their scheduled shift times, but were not provided a means by Defendants to account
17 for this time. For example, approximately 1-2 times per week, Plaintiff would start preparing
18 food and condiments for his upcoming shift 5-10 minutes before clocking in. However, he
19 was not permitted to clock in before the start of his scheduled shift. Similarly, approximately
20 once a week, Defendants' supervisors would ask Plaintiff to take 5-10 minutes to wipe down
21 counters and break down cardboard boxes after clocking out, work for which he was not paid.
22 At all times, Plaintiff and other non-party Aggrieved Employees remained under the control of
23 Defendants. This off-the-clock work could have been recorded by Defendants, but they
24 refused to do so to avoid payment of additional wages to Plaintiff and other non-party
25 Aggrieved Employees.

26 59. Second, during the relevant period, Defendants had, and continue to have, a
27 company-wide policy and/or practice of understaffing their restaurants such that there were
28 too few employees to handle the workload and customer demand, resulting in a failure to

1 provide Plaintiff and other non-party Aggrieved Employees with adequate meal period
2 coverage. As a result of this lack of meal period coverage, Plaintiff and other non-party
3 Aggrieved Employees were not always afforded 30-minute meal periods during shifts when
4 they were entitled to receive a meal period. For example, Plaintiff missed or had meal periods
5 interrupted approximately twice a week because the restaurant was shorthanded and he was
6 often the only delivery driver staffed. Defendants did not pay Plaintiff and other non-party
7 Aggrieved Employees for the time they continued to perform tasks during meal periods.

8 60. Third, because Defendants frowned upon employees accruing meal period
9 penalties, upon information and belief, Defendants' management pressured employees to
10 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
11 periods, regardless of whether they had received a compliant meal period or not, in order to
12 strictly limit meal penalties that would need to be paid by Defendants. Consequently, Plaintiff
13 and other non-party Aggrieved Employees performed work during meal periods for which
14 they were not paid.

15 61. Defendants knew or should have known that, as a result of these company-
16 wide practices and/or policies, Plaintiff and other non-party Aggrieved Employees were
17 performing their assigned duties off-the-clock, and were suffered or permitted to perform
18 work for which they were not paid. Because Plaintiff and other non-party Aggrieved
19 Employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a
20 week or more, some of this off-the-clock work qualified for overtime premium pay.
21 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
22 for all of the overtime hours they actually worked.

23 62. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
24 the balance of overtime compensation as required by California law, violates the provisions of
25 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
26 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
27 2699(a), (f), and (g).

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FAILURE TO PAY MINIMUM WAGES
VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198

63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

64. As set forth above, due to Defendants’ policy of limiting the amount of overtime employees could accrue by discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts, Plaintiff and other non-party Aggrieved Employees were required to work off-the-clock before and/or after their scheduled shifts to complete assigned job duties. In addition, due to Defendants’ company-wide policy and/or practice of understaffing and resultant lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants’ management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

65. Further, during the relevant time period, Defendants also maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and use their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, Defendants were in control of scheduling the date and time for the testing and/or physical examination, selecting the provider/facility where the testing and/or physical examination was to take place, and determining the scope of the testing and/or physical examination. For example, Defendants

1 gave Plaintiff strict instructions to obtain drug testing, and Plaintiff underwent the testing for
2 the sole benefit of Defendants. Plaintiff followed Defendants' instructions and spent 20-25
3 minutes driving to and from the medical facility designated by Defendants in Yuba City, and
4 20-30 minutes undergoing the testing. However, Defendants did not compensate Plaintiff and
5 other non-party Aggrieved Employees for the time they spent traveling to and from the
6 medical facilities and undergoing the mandatory drug testing and/or physical examinations.

7 66. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
8 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
9 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
10 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
11 1194, 1197, and 1198.

12 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
13 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
14 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

21 69. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
28 2012).

1 70. At all relevant times herein set forth, California Labor Code section 226.7,
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
3 meal period mandated by an applicable order of the IWC.

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

11 72. First, as set forth above, during the relevant time period, Defendants had, and
12 continue to have, a company-wide policy and/or practice of understaffing their restaurants and
13 failing to schedule meal periods, which resulted in a lack of meal period coverage, and
14 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
15 uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other non-
16 party Aggrieved Employees would be forced to work in excess of five (5) hours before taking
17 a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal
18 periods altogether.

19 73. Second, because Defendants frowned upon employees accruing meal period
20 penalties, upon information and belief, Defendants' management would encourage employees
21 to clock out for meal periods before the end of the fifth hour of work and/or adjust employee
22 time records to reflect compliant meal periods, regardless of whether they had received a
23 compliant meal period or not, in order to strictly limit meal penalties that would need to be
24 paid by Defendants.

25 74. Third, Defendants did not provide other non-party Aggrieved Employees with
26 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
27 day. Other non-party Aggrieved Employees worked shifts in excess of ten (10) hours without
28 receiving an uninterrupted second 30-minute meal period. Plaintiff and other non-party

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

3 75. As a result, Plaintiff and other non-party Aggrieved Employees had to work
4 through part or all of their meal periods, had their meal periods interrupted, and/or had to wait
5 extended periods of time before taking meal periods. For example, Plaintiff would miss his
6 meal period twice a week and/or take his meal period late four (4) times per week in order to
7 handle the workload and customer demands.

8 76. Defendants knew or should have known that as a result of their company-wide
9 policies and practice of understaffing, restricting overtime accrual, and avoiding meal period
10 penalties, that Plaintiff and other non-party Aggrieved Employees were not actually relieved
11 of all duties to take timely, uninterrupted meal periods. Defendants further knew or should
12 have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal
13 period premium wages when they were missed, late, short, and/or interrupted.

14 77. Defendants also have engaged in a company-wide practice and/or policy of not
15 paying meal period premiums owed when compliant meal periods are not provided. Because
16 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
17 received premium pay for missed, interrupted, or late meal periods.

18 78. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
19 Employees compliant meal periods and failed to pay the full meal period premiums due.
20 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
21 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
22 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
23 (g).

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

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

26 79. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
28 non-party Aggrieved Employees' employment by Defendants.

1 80. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3½) hours.

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

15 82. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 required rest period was not authorized and permitted.

19 83. During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
21 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants’ company-wide practices, including understaffing while assigning heavy
23 workloads, resulted in a lack of rest period coverage and prevented Plaintiff and other non-
24 party Aggrieved Employees from being relieved of all duty in order to take compliant rest
25 periods. Defendant also failed to schedule rest periods or adhere to a schedule of rest periods,
26 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
27 to Defendant and other non-party Aggrieved Employees not being authorized and permitted to
28 take rest periods.

1 84. Furthermore, Defendant maintained and implemented a company-wide on-
2 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
3 Employees remain on Defendants’ premises during their rest periods. Upon information and
4 belief, Defendants’ company-wide on-premises rest period policy prevented Plaintiff and
5 other non-party Aggrieved Employees from being relieved of all duties for rest periods and
6 caused them to perform work during rest periods.

7 85. As a result of Defendants’ practices and policies, Plaintiff and other non-party
8 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
9 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
10 entitled. For example, Plaintiff was only able to take his rest periods 1-2 times per week, and
11 was not permitted to take any rest period on the days he worked 4 hour shifts.

12 86. Defendants also have engaged in a company-wide practice and/or policy of not
13 paying all rest period premiums owed when compliant rest periods are not authorized or
14 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
15 Employees have not received premium pay for all missed rest periods.

16 87. Defendants’ conduct violates the applicable IWC Wage Order and California
17 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
18 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
19 558 and/or 2699(a), (f), and (g).

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

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

27 89. During the relevant time period, Defendants have knowingly and intentionally
28 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and

1 inaccurate wage statements. For example, Defendants issued uniform wage statements to
2 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
3 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
4 the pay period, including overtime rates of pay, and the corresponding number of hours
5 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
6 226(a)(5), and 226(a)(9).

7 90. Because Defendants did not record the time Plaintiff and other non-party
8 Aggrieved Employees spent working off-the-clock and deducted time from Plaintiff's and/or
9 other non-party Aggrieved Employees' records for meal periods that were interrupted and/or
10 missed (and therefore time for which they should have been paid), Defendants did not list the
11 correct amount of gross wages and net wages earned by Plaintiff and other non-party
12 Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the same
13 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
14 other non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
15 applicable hourly rates of pay in effect during the pay period and corresponding accurate
16 number of work hours worked at each hourly rate in violation of section 226(a)(9).

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

25 92. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
28 employment of any employees for longer hours than those fixed by the order or under

conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records by deducting meal periods or recording that compliant meal periods were taken, regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal period start and stop times for Plaintiff and other non-party Aggrieved Employees in violation of section 1198. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

93. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

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

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

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

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

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

UNLAWFUL DISCOUNT OF WAGES

VIOLATION OF LABOR CODE SECTIONS 212 AND 213

102. California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount, at some established place of business in the state, the name and address of which must appear on the instrument. California Labor Code section 212 further prohibits employers from issuing payment of wages due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

103. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

104. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*

1 v. *Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
2 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
3 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
4 relied heavily on:

5 . . . [T]he fact that the pay programs were optional, thereby
6 allowing an employee to either participate in the program or
7 receive his or her pay in some other way, such as direct deposit.
8 Specifically, the DLSE opined that “[t]he success of the
9 described procedure, in practice, will of course require that . . .
10 it is presented as an *alternative* method for wage payment for
11 which [the employees’] participation is optional.” The DLSE
also stated, “[i]t is significant that the program does not
mandate employee participation in the Money Network Service
and that it is designed to provide an alternative for employees
receiving their wage payment. Employees are also given the
option of having their pay direct deposited into an account of
their choosing” (internal citations omitted).

12 105. In addition, California law only permits employers to utilize payroll debit card
13 programs if they provide employees with effective access to their wages without discount.
14 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
15 payroll debit cards where the following requirements are satisfied:

16 . . . (1) [T]he “wages [are] payable at some established place of
17 business in the state and there be at least 30 days of sufficient
18 funds for payment,”; (2) the employees are “fully informed of
19 the service and procedures and that it is represented as an
20 alternative method for wage payment for which their
participation is optional,”; (3) the employees receive “an
itemized wage statement,”; and (4) “at least one transaction per
pay period [is] without fee.”

21 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

22 106. Further, the DLSE notes that the Labor Code manifests:

23 . . . [A] strong public policy that prohibits an employer (or its
24 agent) from imposing conditions or obstacles which interfere
25 with or prevent an employee’s (*sic*) from promptly receiving
26 their due wages *in full*. The imposition of a fee in order to
27 readily *access* one’s earned and paid wage under a payroll card
28 program which is designed to discharge the employer’s wage
payment obligations could impermissibly interfere with an
employee’s receipt of page
wages by creating a financial condition which would have the
effect of reducing or discounting wages because such fee would
be charged against the same account in which wages are

deposited.” (Emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

107. During the relevant time period, Defendants had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Plaintiff received his final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit card payment for the purpose of issuing his wages to him without prior, voluntary approval from Plaintiff. Moreover, under Defendants’ payroll debit program, on information and belief, Defendants did not permit Plaintiff and/or other non-party Aggrieved Employees to withdraw their entire wages in at least one transaction without incurring a fee. Thus, Defendants’ payroll debit card program was and continues to be unlawful as it does not give departing employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method.

108. California courts recognize a policy favoring the full and prompt payment of wages to employees. Defendants’ payroll card program is inconsistent with this policy and for the reasons alleged herein violates California Labor Code sections 212 and 213. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

COLLECTING OR RECEIVING WAGES ALREADY PAID

VIOLATION OF LABOR CODE SECTION 221 AND 224

109. At all times relevant herein, California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages

1 theretofore paid by said employer to said employee. California Labor Code section 224 also
2 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
3 deduction is expressly authorized in writing by the employee."

4 110. During the relevant time period, Defendants unlawfully deducted a portion of
5 wages previously paid to Plaintiff and/or other non-party Aggrieved Employees in violations
6 of California Labor Code section 221. Defendants systematically, and on a company-wide
7 basis, provided Plaintiff and/or other non-party Aggrieved Employees with payroll debit cards
8 as payment of their wages and/or final wages. Under Defendants' payroll debit card program,
9 Plaintiff and/or other non-party Aggrieved Employees were assessed various fees in
10 connection with their use of the payroll debit cards. Plaintiff and/or other non-party
11 Aggrieved Employees were required to pay per-transaction fees, ATM fees, in person teller
12 fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to
13 Plaintiff and/or other non-party Aggrieved Employees resulted in a discount of their wages.

14 111. Defendants' payroll debit card program, which resulted in a discount of wages
15 to employees, is tantamount to taking deductions from Plaintiff's and/or other non-party
16 Aggrieved Employees' paychecks without their written authorization and therefore constitutes
17 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

18 112. Defendants' conduct as alleged herein violates California Labor Code sections
19 221 and 224. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

21 **SECRET PAYMENT OF A LOWER WAGE**

22 **VIOLATION OF LABOR CODE SECTION 223**

23 113. At all times, California Labor Code section 223 makes it unlawful for an
24 employer to secretly pay wages lower than required by statute while purporting to pay legal
25 wages.

26 114. During the relevant time period, Defendants willfully and systematically issued
27 payroll debit cards to Plaintiff and/or other non-party Aggrieved Employees. The payroll
28 debit cards discounted the wages of Plaintiff and/or other non-party Aggrieved Employees by

1 charging various fees in connection with the use of the payroll debit cards. Defendants’
2 payroll debit card program resulted in the payment of less than statutorily-required wages to
3 Plaintiff and/or other non-party Aggrieved Employees. In doing so, Defendants acted with the
4 intent to deprive Plaintiff and/or other non-party Aggrieved Employees of statutory wages,
5 including, but not limited to, overtime wages and minimum wages, to which they were
6 entitled to under California law. Thus, Defendants paid Plaintiff and/or other non-party
7 Aggrieved Employees lower wages than those they were entitled to while purporting that
8 Plaintiff and/or other non-party Aggrieved Employees were properly paid.

9 115. Defendants’ failure to pay Plaintiff and/or other non-party Aggrieved
10 Employees the correct designated wage, while purporting to pay legal wages, is a violation of
11 California Labor Code section 223. Plaintiff and/or other non-party Aggrieved Employees are
12 therefore entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and
13 (g).

14 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
15 **VIOLATION OF LABOR CODE SECTION 222.5**

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

19 117. During the relevant time period, Defendants implemented, on a company-wide
20 basis, an employer-imposed requirement that Plaintiff and other non-party Aggrieved
21 Employees undergo mandatory drug tests and/or physical examinations, but required them to
22 do so at their own expense. As stated, Defendants had a company-wide policy requiring that
23 Plaintiff and other non-party Aggrieved Employees travel to a specified medical facility on
24 their own time and use their own means of transportation to undergo drug testing and/or
25 physical examinations. At all times, Defendants were in control of scheduling the date and
26 time for the drug testing and/or physical examinations, selecting the provider/facility where
27 the drug testing and/or physical examinations were to take place, and determining the scope of
28 the drug test and/or physical examinations.

1 118. During the relevant time period, Plaintiff was instructed by Defendants to travel
2 to a medical facility in Yuba City, California, and obtain a drug test. Plaintiff followed
3 Defendants’ instructions, traveled to the medical facility Defendants selected, and underwent
4 the testing. Plaintiff was required to travel to and from the medical facility selected by
5 Defendants using his own vehicle. Plaintiff followed Defendants’ instructions and drove 5
6 miles roundtrip to and from the medical facility designated by Defendants, and then spent 20-
7 30 minutes waiting at the medical facility and undergoing the requisite testing.

8 119. However, Defendants did not compensate Plaintiff and other non-party
9 Aggrieved Employees for the time they spent traveling to and from their drug tests and/or
10 physical examinations, or for the time they spent undergoing the testing and/or examinations,
11 or reimburse them for the travel expenses they incurred getting to and from the medical
12 facilities. Defendants’ policy and/or practice of not paying for all costs Plaintiff and other
13 non-party Aggrieved Employees incurred obtaining mandatory drug tests and/or physical
14 examinations tests is in violation of California Labor Code section 222.5.

15 120. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **FAILURE TO PROVIDE SUITABLE SEATING**
18 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
19 **REGULATIONS, TITLE 8, SECTION 11050(14)(A)**

20 121. At all relevant times herein, California Labor Code section 1198 makes it
21 illegal to employ an employee under conditions of labor that are prohibited by the applicable
22 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
23 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
24 The employment of any employee . . . under conditions of labor prohibited by the order is
25 unlawful.”

26 122. California Code of Regulations, Title 8, section 11050(14)(A) provides that
27 “[a]ll working employees shall be provided with suitable seats when the nature of the work
28 reasonably permits the use of seats.”

1 123. Plaintiff alleges that Defendants' restaurants are generally similar in their
2 layout and design and there was, and continues to be, space behind cash registers to allow for
3 the presence and use of a seat or stool by other non-party Aggrieved Employees during the
4 performance of their work duties. Defendants could have provided other non-party Aggrieved
5 Employees with a seat or stool at their cash registers with reasonable or no modification to
6 these work areas, but instead denied them seating and forced other non-party Aggrieved
7 Employees to stand throughout the day.

8 124. Other non-party Aggrieved Employees spent a substantial portion of their day
9 behind these cash registers. The nature of the work of an employee performing cashier duties
10 can reasonably be accomplished from a seated position. However, Defendants systematically,
11 and on a company-wide basis, did not provide seats or stools at or near each cash register,
12 forcing employees, including other non-party Aggrieved Employees, to stand throughout their
13 work shifts.

14 125. During the relevant time period, Defendants violated California Labor Code
15 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
16 non-party Aggrieved Employees were not allowed to sit, even when it would not have
17 interfered with the performance of their duties, nor were they provided with suitable seats.
18 Other non-party Aggrieved Employees were assigned cashier duties, which were performed
19 from and connected to a cash register, and could have been performed from a seated position.
20 Other non-party Aggrieved Employees could have handled transactions at the cash register
21 and provided customer service, while seated without interference to their ability to complete
22 these duties.

23 126. Defendants could have placed seats or stools at each cash register for use by
24 other non-party Aggrieved Employees with reasonable or no modification to these work areas.
25 However, on a company-wide basis, Defendants did not provide seats or stools at cash
26 registers. Defendants' management did not inform other non-party Aggrieved Employees that
27 they were allowed to sit down, provide any means for them to sit down, or mention any policy
28 regarding sitting.

127. As a result of Defendants’ company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants’ failure to provide suitable seating to other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

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

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(B)

129. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

130. California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

131. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

132. Defendants did not provide other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not

1 interfere with the performance of their duties for times when they were not engaged in active
2 duties that require standing. In other words, to the extent other non-party Aggrieved
3 Employees engaged in duties in which the nature of the work required standing, Defendants
4 denied them the use of seats nearby when they were not engaged in those duties. Even though
5 the layout of Defendants' workplaces could accommodate seats or stools with reasonable or
6 no modification to these work areas, Defendants have, on a company-wide basis, denied other
7 non-party Aggrieved Employees suitable seating altogether.

8 133. As a result of Defendants' company-wide policy and/or practice prohibiting
9 employees from sitting at any time, even when they were not engaged in active duties
10 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
11 work areas, other non-party Aggrieved Employees were forced to stand during shifts and
12 denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved
13 Employees violated and continues to violate California Labor Code section 1198 and IWC
14 Wage Order 5-2001, Section 14(B).

15 134. Other non-party Aggrieved Employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **FAILURE TO PAY REPORTING TIME PAY**

18 **VIOLATION OF LABOR CODE SECTION 1198**

19 135. California Labor Code section 1198 makes it illegal to employ an employee
20 under conditions of labor that are prohibited by the applicable wage order. California Labor
21 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
22 shall be the ... standard conditions of labor for employees. The employment of any employee
23 ... under conditions of labor prohibited by the order is unlawful."

24 136. California Code of Regulations, Title 8, section 11050(5)(A) provides that
25 "[e]ach workday an employee is required to report for work and does report, but is not put to
26 work or is furnished less than half said employee's usual or scheduled day's work, the
27 employee shall be paid for half the usual or scheduled day's work, but in no event for less
28 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which

1 shall not be less than the minimum wage.” The “primary purpose of the reporting time
2 regulation” is “to guarantee at least partial compensation for employees who report to work
3 expecting to work a specified number of hours, and who are deprived of that amount because
4 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
5 *Cellular*, 209 Cal. App. 4th 556 (2012)

6 137. Upon information and belief, during the relevant time period, Defendants
7 violated California Labor Code section 1198 and California Code of Regulations, Title 8,
8 section 11050(5), because Defendants failed to pay other non-party Aggrieved Employees
9 reporting time pay when they reported to work for their scheduled shift but were put to work
10 for less than half of the regularly scheduled day’s work.

11 138. Defendants had a company-wide practice of sending other non-party Aggrieved
12 Employees home early from their shifts, including before they had worked at least half of their
13 regular shift, but would not pay other non-party Aggrieved Employees for half of their
14 scheduled shift. Although other non-party Aggrieved Employees would report to work based
15 on the schedule that Defendants provided to them, Defendants would send them home before
16 they had worked at least half of their scheduled shifts without giving them reporting time pay.
17 Accordingly, other non-party Aggrieved Employees were not properly compensated with
18 reporting time pay in violation of California Labor Code section 1198.

19 139. Other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **VIOLATION OF LABOR CODE SECTION 2802**

23 140. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen the

1 employer requires the use of tools or equipment or they are necessary to the performance of a
2 job, such tools and equipment shall be provided and maintained by the employer, except that
3 an employee whose wages are at least two (2) times the minimum wage may provide and
4 maintain hand tools and equipment customarily required by the particular trade or craft.”

5 141. First, during the relevant time period, Defendants, on a company-wide basis,
6 required that Plaintiff and other non-party Aggrieved Employees utilize their own personal
7 cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse
8 them for the costs of their cellular phone and/or data plans. For example, Plaintiff was
9 required to use his personal cellular phone to communicate with his supervisor and would
10 spend 5-10 minutes per day providing updates on the status of his deliveries. Although
11 Defendants required Plaintiff and other non-party Aggrieved Employees to regularly utilize
12 their personal cellular phones to carry out work-related responsibilities, Defendants failed to
13 reimburse them for this cost

14 142. Second, Defendants, on a company-wide basis, required Plaintiff and other
15 non-party Aggrieved Employees to utilize their own personal vehicles to carry out company
16 business, such as delivering food, but failed to reimburse them for all costs of travel, including
17 mileage. For example, Plaintiff was required to drive his own vehicle to make food deliveries,
18 even when the delivery location was outside the system-approved delivery area. On
19 information and belief, Defendants’ delivery system did not calculate mileage for deliveries
20 made outside of the normal delivery area, and Plaintiff and other non-party Aggrieved
21 Employees were not fully reimbursed for mileage driven for out-of-area deliveries. Although
22 Defendants required that Plaintiff and other non-party Aggrieved Employees use their own
23 vehicles and complete these tasks as part of their job duties, Defendants never reimbursed
24 them for all of their travel expenses

25 143. Third, as alleged herein, Defendants had a company-wide policy and/or practice
26 of requiring Plaintiff and other non-party Aggrieved Employees to travel in their own personal
27 vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations,
28 but did not reimburse them for their travel expenses, including mileage. For example,

1 Plaintiff followed Defendants' instructions and drove approximately five (5) miles to and
2 from the medical clinic designated by Defendants in Yuba City to obtain a mandatory drug
3 test, but was not reimbursed for his mileage

4 144. Fourth, during the relevant time period, Defendants, on a company-wide basis,
5 required Plaintiff and other non-party Aggrieved Employees to report to work wearing clean
6 uniforms, which forced Plaintiff and other non-party Aggrieved Employees to clean their
7 uniforms frequently and incur expenses for doing so. For example, Plaintiff was given one (1)
8 uniform shirt at the start of his employment with Defendants and a second uniform shirt
9 toward the end of his employment. Due to the nature of restaurant work, Plaintiff's uniform
10 shirts would become stained and/or acquire an unpleasant odor, and because he was often
11 scheduled to work six (6) days in a week, Plaintiff was required to wash his uniform shirts
12 more frequently than he would otherwise do laundry.

13 145. Defendants could have provided Plaintiff and other non-party Aggrieved
14 Employees with the actual tools for use on the job, including company phones, company
15 vehicles, as well as an adequate number of uniforms and/or access to laundering services. Or,
16 Defendants could have reimbursed employees for the costs of their cellular phone usage,
17 travel, mileage, and laundering expenses, but instead, Defendants passed these operating costs
18 off onto Plaintiff and other non-party Aggrieved Employees. Thus, Defendants had, and
19 continue to have, a company-wide policy and/or practice of not reimbursing employees for
20 expenses necessarily incurred. At all relevant times, Plaintiff did not earn at least two (2)
21 times the minimum wage.

22 146. Defendants' company-wide policy and/or practice of passing on their operating
23 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
24 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
25 other non-party Aggrieved Employees for necessary business-related expenses and costs.

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

28 ///

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

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

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

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PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 222.5 (by failing to pay for costs of mandatory physical examinations and/or drug testing); 1198 (by failing to provide suitable seating); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment).

3. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

4. For attorneys’ fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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

Dated: May 7, 2020

Respectfully submitted,

Capstone Law APC

By: 
Bevin Allen Pike
Orlando Villalba
Joseph Hakakian

Attorneys for Plaintiff Stephen Arrowsmith

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 25, 2020

VIA U.S. CERTIFIED MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

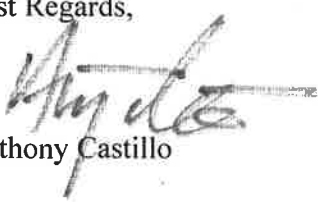
Subject: LWDA-CM-774695-20 - Filing Fee for 2.25.20 Notice
Stephen Arrowsmith v. Sisco Enterprises, Inc., et al.

To Whom It May Concern:

On February 25, 2020, our office submitted a written PAGA Claim Notice via online submission to the Labor and Workforce Development Agency's PAGA Filing portal located at <https://dir.tfaforms.net/260>. Enclosed please find the filing fee, Check No. 7250, for the LWDA Notice with the subject line "Stephen Arrowsmith v. Sisco Enterprises, Inc., et al."

Also enclosed is a copy of the LWDA Notice for reference. Please contact me if you have any questions. You can reach me on my direct line at (310) 712-8169.

Best Regards,


Anthony Castillo

Enclosures (2)

BANK OF AMERICA, NA
11-035/1210

7250

Capstone Law
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

02/21/2020

PAY TO THE
ORDER OF

LWDA

\$ **75.00

Seventy-five and 00/100

DOLLARS

PROTECTED AGAINST FRAUD

LWDA
Dept. of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

MEMO

Arrowsmith v. Sisco Enterprises, Inc., et al.

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Capstone Law APC

7250

02/21/2020

LWDA

Arrowsmith v. Sisco Enterprises, Inc., et al.

75.00

Operating Account

Arrowsmith v. Sisco Enterprises, Inc., et al.

75.00



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 25, 2020

VIA ONLINE SUBMISSION

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

Subject: *Stephen Arrowsmith v. Sisco Enterprises, Inc., et al.*

Dear PAGA Administrator:

This office represents Stephen Arrowsmith in connection with his claims under the California Labor Code. Mr. Arrowsmith was an employee of SISCO ENTERPRISES, INC.; ROUND TABLE DEVELOPMENT COMPANY; THE ROUND TABLE FRANCHISE CORPORATION; and/or ROUND TABLE PIZZA, INC. For the purpose of this letter, Mr. Arrowsmith collectively refers to these entities as "ROUND TABLE."

The employers may be contacted directly at the addresses below:

SISCO ENTERPRISES, INC.
500 W EAST AVE.
CHICO, CA 95926

ROUND TABLE DEVELOPMENT COMPANY
5555 GLENRIDGE CONNECTOR, STE. 850
ATLANTA, GA 30342

THE ROUND TABLE
FRANCHISE CORPORATION
1390 WILLOW PASS RD., SUITE 300
CONCORD, CA 94520

ROUND TABLE PIZZA, INC.
5555 GLENRIDGE CONNECTOR, STE. 850
ATLANTA, GA 30342

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

ROUND TABLE employed Mr. Arrowsmith as an hourly paid, non-exempt employee from approximately April 2019 to September 2019. Mr. Arrowsmith worked for ROUND TABLE as a Delivery Driver at the Round Table Pizza restaurant located at 1278 Stabler Lane, Yuba City,

California 95993. During his employment, Mr. Arrowsmith typically worked six (6) hours per day, (6) days per week from 4:00 p.m. to 11:00 p.m. or 12:00 a.m. Mr. Arrowsmith earned \$12.00 per hour in addition to tips. His job duties included, without limitation, delivering food, cleaning the dining premises and bathrooms, washing plates and dishes as needed, and closing the restaurant.

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

ROUND TABLE's Company-Wide and Uniform Payroll and HR Practices

ROUND TABLE DEVELOPMENT COMPANY; THE ROUND TABLE FRANCHISE CORPORATION; and ROUND TABLE PIZZA, INC. are California corporations that operate and franchise pizza restaurants throughout the United States. SISCO ENTERPRISES, INC. is a California corporation that owns and operates approximately five (5) or more Round Table Pizza restaurant franchises in California. Upon information and belief, ROUND TABLE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Chico, California, or Atlanta, Georgia, for all non-exempt, hourly paid employees working for ROUND TABLE in California, including Mr. Arrowsmith and other aggrieved employees. At all relevant times, ROUND TABLE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Arrowsmith and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40)

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

hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant time period, ROUND TABLE had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Arrowsmith and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Mr. Arrowsmith and other aggrieved employees were forced to work off-the-clock performing tasks before and after their scheduled shift times, but were not provided a means by ROUND TABLE to account for this time. For example, approximately 1-2 times per week, Mr. Arrowsmith would start preparing food and condiments for his upcoming shift 5-10 minutes before clocking in. However, he was not permitted to clock in before the start of his scheduled shift. Similarly, approximately once a week, ROUND TABLE's supervisors would ask Mr. Arrowsmith to take 5-10 minutes to wipe down counters and break down cardboard boxes after clocking out, work for which he was not paid. At all times, Mr. Arrowsmith and other aggrieved employees remained under the control of ROUND TABLE. This off-the-clock work could have been recorded by ROUND TABLE, but it refused to do so to avoid payment of additional wages to Mr. Arrowsmith and other aggrieved employees.

Second, during the relevant period, ROUND TABLE had, and continues to have, a company-wide policy and/or practice of understaffing its restaurants such that there were too few employees to handle the workload and customer demand, resulting in a failure to provide Mr. Arrowsmith and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Arrowsmith and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Arrowsmith missed or had meal periods interrupted approximately twice a week because the restaurant was short-handed and he was often the only delivery driver staffed. ROUND TABLE did not pay Mr. Arrowsmith and other aggrieved employees for the time they continued to perform tasks during meal periods.

Third, because ROUND TABLE frowned upon employees accruing meal period penalties, upon information and belief, ROUND TABLE management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by ROUND TABLE. Consequently, Mr. Arrowsmith and other aggrieved employees performed work during meal periods for which they were not paid.

ROUND TABLE knew or should have known that as a result of these company-wide practices and/or policies, Mr. Arrowsmith and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Arrowsmith and other aggrieved employees worked shifts of eight

(8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Arrowsmith and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ROUND TABLE did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ROUND TABLE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ROUND TABLE failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, ROUND TABLE failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to ROUND TABLE's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Mr. Arrowsmith and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Arrowsmith and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start times to complete assigned job duties. In addition, due to ROUND TABLE'S company-wide policy and/or practice of understaffing and resultant lack of meal period coverage, Mr. Arrowsmith and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, ROUND TABLE management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Further, during the relevant time period, ROUND TABLE also maintained and implemented a company-wide policy of requiring all employees to travel to a medical clinic on their own time and use their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, ROUND TABLE was in control of scheduling the date and time for the testing and/or physical examination, selecting the provider/facility where the testing and/or physical examination was to take place, and determining the scope of the testing and/or physical examination. For example, ROUND TABLE gave Mr. Arrowsmith strict instructions to obtain drug testing, and Mr. Arrowsmith underwent the testing for the sole benefit of ROUND TABLE. Mr. Arrowsmith followed ROUND TABLE's instructions and spent 20-25 minutes driving

to and from the medical clinic designated by ROUND TABLE in Yuba City, and 20-30 minutes undergoing the testing. However, ROUND TABLE did not compensate Mr. Arrowsmith and other aggrieved employees for the time they spent traveling to and from the medical clinics and undergoing the mandatory drug testing and/or physical examinations.

Thus, ROUND TABLE did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, ROUND TABLE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, ROUND TABLE regularly failed to pay at least minimum wages to Mr. Arrowsmith and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

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

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

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

First, as set forth above, during the relevant time period, ROUND TABLE had, and continues to have, a company-wide policy and/or practice of understaffing its restaurants and failing to schedule meal periods, which resulted in a lack of meal period coverage, and prevented Mr. Arrowsmith and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Arrowsmith and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Mr. Arrowsmith would miss his meal period twice a week and/or take his meal period late four (4) times per week in order to handle the workload and customer demands.

Second, because ROUND TABLE frowned upon employees accruing meal period penalties, upon information and belief, ROUND TABLE's management would encourage employees to clock out for meal periods before the end of the fifth hour of work and/or adjust employee time records to reflect

compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by ROUND TABLE.

Third, ROUND TABLE did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Arrowsmith and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

ROUND TABLE knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Arrowsmith and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ROUND TABLE further knew or should have known that it did not pay Mr. Arrowsmith and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

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

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

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

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

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

During the relevant time period, ROUND TABLE regularly failed to authorize and permit Mr. Arrowsmith and other aggrieved employees to take a ten (10) minute rest period per each four (4)

hour period worked or major fraction thereof. As with meal periods, ROUND TABLE's company-wide practices, including understaffing while assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Arrowsmith and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. ROUND TABLE also failed to schedule rest periods or adhere to a schedule of rest periods, which, coupled with ROUND TABLE's failure to provide adequate rest period coverage, further led to Mr. Arrowsmith and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, ROUND TABLE maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Arrowsmith and other aggrieved employees remain on ROUND TABLE's premises during their rest periods. Upon information and belief, ROUND TABLE's company-wide on-premises rest period policy prevented Mr. Arrowsmith and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Mr. Arrowsmith and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Arrowsmith was only able to take his rest periods 1-2 times per week, and was not permitted to take any rest period at on the days he worked 4 hour shifts.

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

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

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

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

violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, ROUND TABLE has knowingly and intentionally provided Mr. Arrowsmith and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ROUND TABLE issued uniform wage statements to Mr. Arrowsmith and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, ROUND TABLE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because ROUND TABLE did not record the time Mr. Arrowsmith and other aggrieved employees spent working off-the-clock and deducted time from Mr. Arrowsmith's and/or other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ROUND TABLE did not list the correct amount of gross wages and net wages earned by Mr. Arrowsmith and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ROUND TABLE failed to accurately list the total number of hours worked by Mr. Arrowsmith and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ROUND TABLE failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Arrowsmith and other aggrieved employees, in violation of section 1198. As stated, ROUND TABLE engaged in a company-wide practice and/or policy of falsifying Mr. Arrowsmith's and/or other aggrieved employees' time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Arrowsmith and other aggrieved employees. Furthermore, in light of ROUND TABLE's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, ROUND TABLE kept no records of meal start and end times for second meal periods.

Because ROUND TABLE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Arrowsmith and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Arrowsmith and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

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

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

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

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

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

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

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing" (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212

and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, ROUND TABLE had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Mr. Arrowsmith and other aggrieved employees, to discharge its wage payment obligations to its employees. ROUND TABLE’s payroll debit card program was not voluntary or optional to employees. ROUND TABLE had a practice and/or policy of automatically issuing payroll debit cards to employees without giving them the option to elect their form of payment for their wages. For example, Mr. Arrowsmith received his final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, ROUND TABLE automatically enrolled Mr. Arrowsmith in its payroll debit card payment for the purpose of issuing his wages to him. Moreover, under ROUND TABLE’s payroll debit program, on information and belief, ROUND TABLE did not permit other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee.

California courts recognize a policy favoring the full and prompt payment of wages to employees. ROUND TABLE’s payroll card program is inconsistent with this policy. Because ROUND TABLE’s company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Arrowsmith and other aggrieved employees are therefore entitled to recover civil penalties,

attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, ROUND TABLE unlawfully deducted a portion of wages previously paid to Mr. Arrowsmith and other aggrieved employees in violation of California Labor Code section 221.

ROUND TABLE systematically, and on a company-wide basis, provided Mr. Arrowsmith and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under ROUND TABLE's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

ROUND TABLE's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Arrowsmith's and/or other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Arrowsmith and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, ROUND TABLE willfully and systematically issued payroll debit cards to Mr. Arrowsmith and other aggrieved employees. The payroll debit cards discounted the wages of Mr. Arrowsmith and/or other aggrieved employees by charging various fees in connection with the use of the payroll debit cards. ROUND TABLE's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Arrowsmith and/or other aggrieved employees. In doing so, ROUND TABLE acted with the intent to deprive Mr. Arrowsmith and/or other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, ROUND TABLE paid Mr. Arrowsmith and/or other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Arrowsmith and other aggrieved employees were properly paid.

Mr. Arrowsmith and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

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

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

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

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, ROUND TABLE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because ROUND TABLE failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift

but were put to work for less than half of the regular schedule. ROUND TABLE had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees would report to work based on the schedule that ROUND TABLE provided to them, ROUND TABLE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

ROUND TABLE’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind cash registers to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. ROUND TABLE could provide other aggrieved employees with a seat or stool at its cash registers, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash registers. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, ROUND TABLE systematically, and on a company-wide basis, does not provide seats or stools at or near cash registers, forcing other aggrieved employees to stand throughout their work shifts.

ROUND TABLE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. ROUND TABLE's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of ROUND TABLE's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. ROUND TABLE's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 10-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ROUND TABLE into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, ROUND TABLE's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. ROUND TABLE could provide other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

ROUND TABLE did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the

nature of the work required standing, ROUND TABLE denied them the use of seats nearby during lulls in their work duties. Moreover, ROUND TABLE did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of ROUND TABLE's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and other aggrieved employees were forced to stand during shifts and denied seats. ROUND TABLE's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 10-2001, Section 14(B).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ROUND TABLE into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, ROUND TABLE, on a company-wide basis, required that Mr. Arrowsmith and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Arrowsmith was required to use his personal cellular phone to communicate with his supervisor and would spend 5-10 minutes per day providing updates on the status of his deliveries. Although ROUND TABLE required Mr. Arrowsmith and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, ROUND TABLE failed to fully reimburse them for this cost.

Second, ROUND TABLE, on a company-wide basis, required Mr. Arrowsmith and other aggrieved employees to utilize their own personal vehicles to carry out company business, such as delivering food, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Arrowsmith was required to drive his own vehicle to make food deliveries, even when the delivery location was outside the system-approved delivery area. On information and belief, ROUND TABLE's delivery system did not calculate mileage for deliveries made outside of the normal delivery area, and Mr. Arrowsmith and other aggrieved employees were not fully reimbursed for mileage driven for out-of-area deliveries.

Third, as stated, Round Table had a company-wide policy and/or practice of requiring Mr. Arrowsmith and other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, Mr. Arrowsmith followed ROUND TABLE's

instructions and drove approximately five (5) miles to and from the medical clinic designated by ROUND TABLE in Yuba City to obtain a mandatory drug test, but was not reimbursed for his mileage.

Fourth, during the relevant time period, ROUND TABLE, on a company-wide basis, required Mr. Arrowsmith and other aggrieved employees to report to work wearing clean uniforms, which forced Mr. Arrowsmith and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, Mr. Arrowsmith was given one (1) uniform shirt at the start of his employment with ROUND TABLE and second uniform shirt toward the end of his employment. Due to the nature of restaurant work, Mr. Arrowsmith's uniform shirts would become stained and/or acquire an unpleasant odor, and because he was often scheduled to work six (6) days in a week, Mr. Arrowsmith was required to wash his uniform shirts more frequently than he would otherwise do laundry.

ROUND TABLE could have provided Mr. Arrowsmith and/or other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, and an adequate number of uniforms, and/or provided laundering services. Or, ROUND TABLE could have reimbursed employees for their cellular phone, travel mileage, and laundering expenses. Instead, ROUND TABLE passed these operating costs off onto Mr. Arrowsmith and other aggrieved employees. At all relevant times, Mr. Arrowsmith did not earn at least two (2) times the minimum wage.

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

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

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

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

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." ROUND TABLE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Arrowsmith's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Arrowsmith seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Arrowsmith, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against ROUND TABLE for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Arrowsmith's reasonable attempt to settle his dispute with ROUND TABLE prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform ROUND TABLE of Mr. Arrowsmith's aforementioned grievances and the proposed remedies as detailed below, while affording ROUND TABLE a reasonable opportunity to satisfy Mr. Arrowsmith's demands.

Demand is hereby made that ROUND TABLE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. ROUND TABLE shall pay Mr. Arrowsmith and all other aggrieved employees employed by ROUND TABLE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. ROUND TABLE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.

3. ROUND TABLE shall conduct a survey or interview all current and former aggrieved employees in California who worked for ROUND TABLE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, cellular phone, and uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. ROUND TABLE shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. ROUND TABLE also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. ROUND TABLE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for ROUND TABLE's benefit, including, but not limited to, costs of mandatory medical examinations, travel, cellular phone, uniform maintenance expenses, as required by Labor Code sections 222.5 and 2802.
6. ROUND TABLE shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), secret payment of lower wages (Labor Code sections 223), and unlawful deductions (Labor Code sections 221 and 224).
7. ROUND TABLE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. ROUND TABLE shall provide Mr. Arrowsmith and all aggrieved employees employed by ROUND TABLE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. ROUND TABLE shall implement and provide suitable seating to all aggrieved employees.
10. ROUND TABLE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. ROUND TABLE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. ROUND TABLE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 5-2001, section 20.

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

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Anthony Castillo".

Anthony Castillo

Copy: SISCO ENTERPRISES, INC. (via U.S. Certified Mail); ROUND TABLE DEVELOPMENT COMPANY (via U.S. Certified Mail); THE ROUND TABLE FRANCHISE CORPORATION (via U.S. Certified Mail); ROUND TABLE PIZZA, INC. (via U.S. Certified Mail)

UNITED STATES POSTAGE
PITNEY BOWES
02 1P
\$007.90
0006844025 FEB 25 2020
MAILED FROM ZIP CODE 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

SISCO ENTERPRISES, INC.
500 W EAST AVE.
CHICO, CA 95926



9590 9402 4882 9032 7436 97

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1865

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

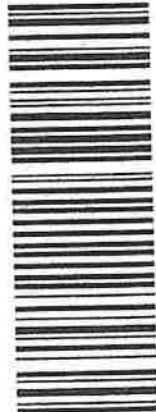
B. Received by (Printed Name) C. Date of Delivery

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

3. Service Type
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
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CHICO, CA 95926

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Certified Mail Fee \$ 3.50	Postmark Here Arrowsmith v. Sisco Enterprises, Inc.
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy) \$ 2.80	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.60	
Total Postage and Fees \$ 7.90	
Sent To SISCO ENTERPRISES, INC. Street and Apt. No., or P.O. Box No. 500 W EAST AVE. City, State, ZIP+4® CHICO, CA 95926	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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UNITED STATES POSTAGE
PITNEY BOWES
\$007.90
02 1P
0006944035 FEB 25 2020
MAILED FROM ZIP CODE 90067



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

1. Article Addressed to:

ROUND TABLE DEVELOPMENT COMPANY
5555 GLENRIDGE CONNECTOR, STE. 850
ATLANTA, GA 30342



9590 9402 4882 9032 7437 10

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1421

PS Form 3811, July 2015 PSN 7530-02-000-9053

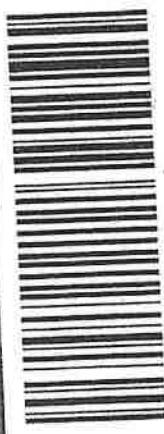
COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
X ☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type ☐ Priority Mail Express®
☐ Adult Signature ☐ Registered Mail™
☐ Adult Signature Restricted Delivery ☐ Registered Mail Restricted Delivery
☒ Certified Mail® ☐ Return Receipt for Merchandise
☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™
☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail (over \$500)

Domestic Return Receipt

CERTIFIED MAIL



7019 0700 0001 7653 1421

ROUND TABLE DEVELOPMENT COMPANY
5555 GLENRIDGE CONNECTOR, STE. 850
ATLANTA, GA 30342

7019 0700 0001 7653 1421

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Extra Services & Fees (check box, add fees as appropriate)	
☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$ 1.60
Total Postage and Fees	\$ 7.90
Sent To	ROUND TABLE DEVELOPMENT COMPANY
Street and Apt. No., or PO Box No.	5555 GLENRIDGE CONNECTOR, STE. 850
City, State, ZIP+4®	ATLANTA, GA 30342

PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

Postmark Here
Arrowsmith v. Round Table Development Company

me
AW APC
Park East, Ste 1000
CA 90067

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W APC
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A 90067

CERTIFIED MAIL



7019 0700 0001 7653 1445



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■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X ☐ Agent ☐ Addressee	
1. Article Addressed to: THE ROUND TABLE FRANCHISE CORPORATION 1390 WILLOW PASS RD., SUITE 300 CONCORD, CA 94520		B. Received by (Printed Name) C. Date of Delivery	
2. Article Number (Transfer from service label) 7019 0700 0001 7653 1445		D. Is delivery address different from Item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
 9590 9402 4882 9032 7437 03		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

THE ROUND TABLE
FRANCHISE CORPORATION
1390 WILLOW PASS RD., SUITE 300
CONCORD, CA 94520

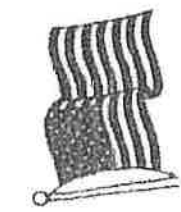
7019 0700 0001 7653 1445

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Certified Mail Fee \$ 3.50	Postmark Here Arrowsmith v. The Round Table Franchise Corporation
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy) \$ 2.50	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.60	
Total Postage and Fees \$ 7.90	
Sent To THE ROUND TABLE FRANCHISE CORPORATION 1390 WILLOW PASS RD., SUITE 300 CONCORD, CA 94520	
PS Form 3800, April 2015 PSN 7530-02-000-0047 See Reverse for Instructions	



7019 0700 0001 7653 1438

ne
WPC
Park East, Ste 1000
A 90067



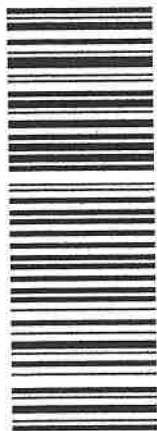
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☐ Agent ☐ Addressee X	
1. Article Addressed to:		B. Received by (Printed Name)	C. Date of Delivery
ROUND TABLE PIZZA, INC. 5555 GLENRIDGE CONNECTOR, STE. 850 ATLANTA, GA 30342		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
2. Article Number (Transfer from service label) 7019 0700 0001 7653 1438		3. Service Type	
9590 9402 4882 9032 7437 27		☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Registered Mail Restricted Delivery (over \$500)	
		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

ROUND TABLE PIZZA, INC.
5555 GLENRIDGE CONNECTOR, STE. 850
ATLANTA, GA 30342

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Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy) \$ 2.80	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.60	
Total Postage and Fees \$ 7.90	
Sent To ROUND TABLE PIZZA, INC. Street and Apt. No., or PO Box No. 5555 GLENRIDGE CONNECTOR, STE. 850 City, State, ZIP+4® ATLANTA GA 30342	

tone
LAW APC
Jry Park East, Ste 1000
S, CA 90067



7019 0700 0001 7653 1858



DEPARTMENT OF INDUSTRIAL RELATIONS
ACCOUNTING UNIT
455 GOLDEN GATE AVENUE, 10TH FLOOR
SAN FRANCISCO CA 94102

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For delivery information, visit our website at www.usps.com ®	
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Certified Mail Fee \$ 3.50	Postmark Here Arrowsmith v. Round Table Pizza
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.80	
Total Postage and Fees \$ 5.30	
Sent To Department of Industrial Relations	
Street and Apt. No., or PO Box No. Accounting Unit	
City, State, ZIP+4® 455 Golden Gate Avenue, 10 th Flr. San Francisco, CA 94102	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	