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VIA ONLINE SUBMISSION

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

Subject: *Jamar Spencer v. Kura Sushi USA, Inc.*

Dear PAGA Administrator:

This office represents Jamar Spencer in connection with his claims under the California Labor Code. Mr. Spencer was an employee of KURA SUSHI USA, INC. (referred to as “KURA SUSHI”).

The employer may be contacted directly at the address below:

KURA SUSHI USA, INC.
17932 SKY PARK CIRCLE, SUITE H
IRVINE, CA 92614

Mr. Spencer 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. Spencer seeks relief on behalf of himself, the State of California, and other persons who are or were employed by KURA SUSHI 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.

KURA SUSHI employed Mr. Spencer as an hourly paid, non-exempt employee from approximately March 20, 2019 to April 19, 2019. Mr. Spencer worked for KURA SUSHI as a Server at their Sacramento, California restaurant located at 1600 Ethan Way, Suite #10, Sacramento, California 95825. During his employment, Mr. Spencer typically worked six (6) to eight (8) hours per day, four (4) to five (5) days per week, and approximately twenty-four (24) to forty (40) hours per week. At the time Mr. Spencer’s employment with KURA SUSHI ended, he earned approximately \$12 per hour. His job duties included, without limitation, explaining Kura Sushi’s conveyor belt system to customers, fulfilling and serving drink orders, bussing tables, and filling condiment bottles.

KURA SUSHI committed one or more of the following Labor Code violations against Mr. Spencer, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

KURA SUSHI’s Company-Wide and Uniform Payroll and HR Practices

KURA SUSHI USA, INC. is a Delaware corporation. On information and belief, KURA SUSHI is headquartered at 17932 Sky Park Circle, Suite H, Irvine, California 92614. KURA SUSHI operates and manages a chain of Japanese-themed restaurants sushi served via conveyor belts. KURA SUSHI owns or franchises over 365 restaurant locations worldwide. There are approximately nine (9) KURA SUSHI locations in California, all of which are company owned. Upon information and belief, KURA SUSHI maintains a single, centralized Human Resources (HR) department at their corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for KURA SUSHI in California, including Mr. Spencer and other aggrieved employees. At all relevant times, KURA SUSHI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Spencer and other aggrieved employees, regardless of their location or position.

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

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

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

KURA SUSHI willfully failed to pay all overtime wages owed to Mr. Spencer and other aggrieved employees. During the relevant time period, Mr. Spencer and other aggrieved employees were not

¹ These facts, theories, and claims are based on Mr. Spencer’s experience and counsel’s review of those records currently available relating to Mr. Spencer’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. Spencer 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.

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, KURA SUSHI had, and continues to have, a company-wide policy of staffing their restaurants strictly based on labor hours allotted by a labor budget, which has resulted in and continues to result in chronic understaffing. KURA SUSHI'S company-wide understaffing of their restaurants led to a failure to provide employees with adequate meal period coverage. As a result, Mr. Spencer and other aggrieved employees were not always provided with uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a meal period. For example, twice a week, Mr. Spencer's meal periods were interrupted for ten (10) to fifteen (15) minutes due to requests by managers and supervisors to assist with an influx of customers.

Second, during the relevant time period, KURA SUSHI had, and continue to have, a strict policy prohibiting employees from accruing overtime, causing Mr. Spencer and other aggrieved employees to perform duties off-the-clock without reporting their hours worked. As a result, Mr. Spencer and other aggrieved employees were routinely required to perform tasks before and after their scheduled shifts, on their off-days, and during unpaid meal periods. For example, three (3) times a week, Mr. Spencer spent thirty (30) minutes to one (1) hour working off-the-clock setting up tables and filling condiment bottles before clocking in for his scheduled shift. Additionally, one (1) to three (3) times a week, Mr. Spencer spent thirty (30) minutes to one (1) hour working off-the-clock after clocking out from his scheduled shift completing assigned tasks, such as bussing tables and making drink orders. Furthermore, five (5) times a week, Mr. Spencer spent approximately five (5) to ten (10) minutes working off-the-clock taking out the garbage after clocking out from his scheduled shift.

Third, KURA SUSHI had a company-wide practice of requiring Mr. Spencer and other aggrieved employees to respond to work-related messages at all times using their personal cellular phones, including when they were off-the-clock. KURA SUSHI insisted that Mr. Spencer and other aggrieved employees promptly respond to work-related communications, even outside of scheduled shifts. For example, at least once a week, Mr. Spencer had to respond to messages sent through GroupMe, the group text messaging app KURA SUSHI required Mr. Spencer and other aggrieved employees to download to their personal phones. These messages were sent while Mr. Spencer was off-the-clock, either after a scheduled shift or during an unpaid meal break. Mr. Spencer would spend approximately a total of one (1) to two (2) minutes reading and responding to these messages every shift.

Fourth, KURA SUSHI had a company-wide policy and/or practice of requiring other aggrieved employees to conduct or attend mandatory trainings at remote locations, but did not compensate them for their time spent traveling to and from these locations. For example, KURA SUSHI would schedule other aggrieved employees for mandatory job training meetings at remote locations, yet KURA SUSHI did not compensate them for their time spent traveling to and from these locations.

KURA SUSHI knew or should have known that as a result of these company-wide practices and/or policies, Mr. Spencer 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. Spencer 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. Spencer and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, KURA SUSHI did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, KURA SUSHI paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, KURA SUSHI failed to incorporate all remunerations, 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, KURA SUSHI failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Spencer 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 KURA SUSHI'S use of labor budgets and resultant understaffing, along with its practice of requiring employees to avoid accruing overtime, Mr. Spencer and other aggrieved employees had their meal periods interrupted or were otherwise not relieved of all duties during meal periods. As a further result of these policies and/or practices, Mr. Spencer and other aggrieved employees were forced to work off-the-clock. Additionally, as stated, KURA SUSHI had a company-wide policy and/or practice of requiring Mr. Spencer and other aggrieved employees to communicate with management and co-workers while off-the-clock using their cellular phones regarding work-related matters. Lastly, KURA SUSHI had a company-wide policy and/or practice of requiring other aggrieved employees to conduct or attend mandatory trainings at remote locations on their off-days, but did not compensate them for their time spent traveling to and from these locations.

Thus, KURA SUSHI 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, KURA SUSHI 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, KURA SUSHI regularly failed to pay at least minimum wages to Mr. Spencer 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. Spencer 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).

As set forth above, during the relevant time period, KURA SUSHI had, and continues to have, a company-wide practice of requiring employees to avoid accruing overtime hours. This requirement to avoid reporting all hours worked, coupled with KURA SUSHI's company-wide policy and/or practice of labor budgeting, understaffing, and failure to provide adequate meal period coverage, prevented Mr. Spencer and other aggrieved employees from taking compliant meal periods and caused Mr. Spencer and other aggrieved employees to work off-the-clock without that time being recorded. As a result, Mr. Spencer and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, twice a week, Mr. Spencer's meal periods were interrupted for ten (10) to fifteen (15) minutes due to requests by managers and supervisors to assist with an influx of customers. As a further example, Mr. Spencer was sometimes made to work over five (5) hours straight before KURA SUSHI permitted him to take his meal period.

Moreover, KURA SUSHI has a policy and/or practice of requiring that Mr. Spencer and other aggrieved employees carry their personal cellular phones at all times in order to respond to messages from supervisors and management on the GroupMe app, even during unpaid meal periods. KURA SUSHI'S supervisors and management contacted Mr. Spencer and other aggrieved employees through the GroupMe app during their meal periods regarding work-related matters, including to instruct employees to return to work. Consequently, Mr. Spencer and other aggrieved employees suffered untimely or interrupted meal periods, work for which they were not paid. Thus, as a result of KURA SUSHI'S company-wide policies and/or practices, and requirement that Mr. Spencer and other aggrieved employees carry their personal cellular phones at all times and respond to messages from management on the GroupMe app at all times, Mr. Spencer and other aggrieved employees were rarely provided timely, uninterrupted 30-minute meal periods during shifts in which they were entitled to receive meal periods.

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

Furthermore, KURA SUSHI engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Alternatively, to the extent that KURA SUSHI did pay other aggrieved employees meal period premium wages, KURA SUSHI to other aggrieved employees, it did so at the incorrect rates. Because KURA SUSHI did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, KURA SUSHI 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, KURA SUSHI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Spencer 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 Provide 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).

First, as with meal periods, KURA SUSHI'S requiring that employees carry their personal cellular phones at all times in order to respond to messages on the GroupMe app prevented Mr. Spencer and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. As a result, Mr. Spencer and other aggrieved employees would frequently work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Spencer's rest periods were interrupted three (3) times per week by messages from his managers and supervisors requesting him to bus tables.

Second, as with meal periods, KURA SUSHI'S policy and/or practice of utilizing labor budgets, and the resultant understaffing, led to a failure to provide Mr. Spencer and other aggrieved employees with adequate meal period coverage. As a result, Mr. Spencer and other aggrieved employees would frequently work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, once a week, Mr. Spencer would work over four (4) hours without being authorized and permitted to take his first 10-minute rest period. As a further example, Mr. Spencer missed three (3) rest breaks entirely during his employment.

Additionally, upon information and belief, KURA SUSHI maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Spencer and other aggrieved employees remain on KURA SUSHI'S premises during their rest periods. Upon information and belief, KURA SUSHI'S company-wide on-premises rest period policy prevented Mr. Spencer and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

KURA SUSHI also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Spencer and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that KURA SUSHI did pay rest period premium wages to Mr. Spencer and/or other aggrieved employees, KURA SUSHI did not pay Mr. Spencer and/or other aggrieved employees at the correct rate of pay for premium wages because KURA SUSHI systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, to the extent KURA SUSHI paid Mr. Spencer and/or other aggrieved employees premium pay for missed rest periods, it did so at a lower rate than required by law.

Accordingly, KURA SUSHI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Spencer 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. KURA SUSHI has not provided Mr. Spencer and other aggrieved employees with properly itemized wage statements. 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, KURA SUSHI has knowingly and intentionally provided Mr. Spencer and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, KURA SUSHI issued uniform wage statements to Mr. Spencer 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, KURA SUSHI violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because KURA SUSHI did not record the time Mr. Spencer and other aggrieved employees spent working off-the-clock, KURA SUSHI did not list the correct amount of gross wages and net wages earned by Mr. Spencer and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, KURA SUSHI failed to accurately list the total number of hours worked by Mr. Spencer and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the 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), KURA SUSHI willfully failed to maintain accurate payroll records for Mr. Spencer 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, KURA SUSHI failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Spencer and other aggrieved employees in violation of section 1198.

Because KURA SUSHI failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Spencer 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. Spencer 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. Spencer 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, KURA SUSHI failed to pay Mr. Spencer and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, split shift wages, and reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Spencer 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.

On information and belief, KURA SUSHI has a company-wide practice and/or policy of paying departing employees their final wages later than the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Spencer gave immediate notice of his resignation on April 19, 2019. However, KURA SUSHI did not provide Mr. Spencer with his final paycheck until April 25, 2019, six (6) days later. Thus, KURA SUSHI failed to pay Mr. Spencer his final wages within the requisite time limit in violation of Labor Code section 202.

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

Mr. Spencer 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– Insufficient Funds at Time of Issuance of Check

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. Further, section 212 requires the instrument have, “at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.”

On information and belief, KURA SUSHI has a company-wide practice of issuing instruments to employees without sufficient funds in at the time of issuance. For example, KURA SUSHI provided Mr. Spencer with his final paycheck on April 25, 2019. When Mr. Spencer attempted to deposit this check in his banking account at his credit union, the check did not clear. As a result, Mr. Spencer’s credit union charged him overdraft fees when charges were paid from his account without the funds from his KURA SUSHI check he had relied upon. Days later, Mr. Spencer received a “Return to Maker” letter from his credit union, with the check enclosed.

As a result of KURA SUSHI’s company-wide policy and/or practice of issuing instruments to employees without sufficient funds in at the time of issuance, Mr. Spencer and/or other aggrieved employees suffered overdraft fees when charges were paid from their accounts without the funds from their KURA SUSHI checks they had relied upon. KURA SUSHI’s failure to issue instruments with sufficient funds in to Mr. Spencer and/or other aggrieved employees violates California Labor Code section 212.

Mr. Spencer 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 § 450 – Coerced Patronage of Employer’s Business

At all relevant times herein, California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer’s business in the purchase of a company-provided good.

KURA SUSHI had, and continues to have, a company-wide policy of requiring employees to purchase food directly from the company in order to sit within the dining area of the restaurant during meal periods. As such, the only times Mr. Spencer and other aggrieved employees purchased were allowed to sit within the dining area of the restaurant was when they purchased food directly from the company. Furthermore, as alleged below, KURA SUSHI does not provide suitable resting areas for employees, thus, employees are coerced to purchase food from KURA SUSHI in order to rest during work hours at their restaurant. For example, once, Mr. Spencer was allowed to sit and rest in KURA SUSHI’S dining area after he purchased a fried squid entrée during a meal period. KURA SUSHI’S conduct of compelling and/or coercing Mr. Spencer and other aggrieved employees to purchase goods from them violates California Labor Code section 450.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(A) – Failure to Provide Change Rooms

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(13)(A) provides that “[w]hen the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.”

KURA SUSHI’s California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a changing room or equivalent space that employees may change their clothing in reasonable privacy and comfort. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a change room or equivalent space in its restaurant, with reasonable or no modification, but instead denied, and continues to deny, employees these changing room and forced Mr. Spencer and other aggrieved employees to change into uniforms in the restrooms of the restaurant.

KURA SUSHI did not provide Mr. Spencer and other aggrieved employees with change rooms or any equivalent to allow them to change into uniforms in reasonable privacy and comfort. Furthermore, due to KURA SUSHI’S attendance policy, Mr. Spencer and other aggrieved employees were expected to be in uniform and prepared to begin work at the start of their scheduled shifts. In other words, to the extent Mr. Spencer and other aggrieved employees were required to wear uniforms and were unable to change into the uniform prior to reporting to work, KURA SUSHI denied them access to a reasonably private and comfortable changing area outside of the restaurant’s restrooms. For example, once, when Mr. Spencer arrived to work at the beginning of his scheduled shift in his street clothing, he was forced to use KURA SUSHI’S restroom in order to change into his uniform. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to a changing room or area under California law.

As a result of KURA SUSHI’s company-wide policy and/or practice of failing to provide adequate change room facilities to employees at any time, Mr. Spencer and other aggrieved employees were forced to change into their required uniforms in KURA SUSHI’S restroom. KURA SUSHI’s failure to provide change rooms to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(A).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI into compliance with California’s change room 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 13(B) – Failure to Provide Suitable Resting Facilities

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(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

KURA SUSHI’s California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during rest or meal periods. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a resting facility within its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees areas to rest. As a result, Mr. Spencer and other aggrieved employees were forced to adjust to unrestful areas, such as standing in active work areas during rest periods, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as utilizing the tables and chairs of nearby business during meal periods.

KURA SUSHI did not provide Mr. Spencer and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Spencer and other aggrieved employees are legally allowed to forgo assigned tasks, as in during a rest or meal period, KURA SUSHI denied them any area within their restaurants to cease work and recover. For example, Mr. Spencer was not allowed to sit in the dining area during working hours and while in uniform, unless he purchased and ate a meal prepare by KURA SUSHI during a meal period. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to resting facilities under California law.

As a result of KURA SUSHI’s company-wide policy and/or practice of denying employees any area to rest within their restaurants, unless the employee patronized the business, and company-wide failure to provide resting facilities in their restaurants, Mr. Spencer and other aggrieved employees were forced to adjust to unrestful areas or search for facilities outside their restaurants to cease work and recover. KURA SUSHI’s failure to provide suitable resting facilities to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(B).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI 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.*

KURA SUSHI’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 Mr. Spencer and other aggrieved employees during lulls in operation. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denied, and continues to deny, employees seating and forced Mr. Spencer and other aggrieved employees to stand throughout the day.

KURA SUSHI did not provide Mr. Spencer and 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 Mr. Spencer and other aggrieved employees engaged in duties in which the nature of the work required standing, KURA SUSHI denied them the use of seats nearby during lulls in their work duties. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to a seat or stool under California law.

As a result of KURA SUSHI’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, Mr. Spencer and other aggrieved employees were forced to stand during shifts and denied seats. KURA SUSHI’s failure to provide suitable seating to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI 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 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)

KURA SUSHI violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because KURA SUSHI had a company-wide practice of sending Mr. Spencer and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but failed to pay Mr. Spencer and other aggrieved employees for half of their scheduled shift. Although Mr. Spencer and other aggrieved employees would report to work based on the schedule that KURA SUSHI provided to them, KURA SUSHI would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, on two (2) separate occasions, Mr. Spencer reported to work for a scheduled shift and was immediately sent home, but was not compensated with reporting time pay. Accordingly, Mr. Spencer and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Spencer 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).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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(4)(C) provides that "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

KURA SUSHI willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because KURA SUSHI failed to pay Mr. Spencer and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, during the week of April 8, 2020, KURA SUSHI required Mr. Spencer to return to work for a second shift over one (1) hour after his first shift on the same day ended, yet KURA SUSHI never provided Mr. Spencer with a split shift premium. Accordingly, KURA SUSHI required Mr. Spencer and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

KURA SUSHI's failure to provide Mr. Spencer and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations

Title 8, Section 11050(4)(C). Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties pursuant to sections 1194 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, KURA SUSHI had a company-wide written policy of requiring Mr. Spencer and other aggrieved employees to report to work in clean uniforms under threat of discipline, which forced Mr. Spencer and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, Mr. Spencer was given two (2) white, button-down uniform shirts, two (2) aprons, and two (2) pairs of black slacks at the start of his employment with KURA SUSHI. Since he was often scheduled to work four (4) to five (5) days in a week, Mr. Spencer was required to wash his uniform shirts, aprons, and slacks three (3) times a week—much more frequently than he would otherwise do his laundry. Furthermore, each time Mr. Spencer reported to work with a dirty apron, he was given a written warning.

Second, during the relevant time period, KURA SUSHI, on a company-wide basis, required that Mr. Spencer 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. Spencer was required to download the GroupMe group texting app on his personal cellular phone in order to answer texts from management to discuss any problems or ongoing issues at the restaurant, including any requests to assist with an influx of customers. Although KURA SUSHI required Mr. Spencer and other aggrieved employees to regularly utilize his personal cellular phone to carry out work-related responsibilities, KURA SUSHI failed to reimburse them for this cost.

KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with the actual tools required for use on the job, including company phones, an adequate number of uniforms, and/or provided laundering services. Or, KURA SUSHI could have reimbursed Mr. Spencer and other aggrieved employees for their cost of their cellular phone usage, and laundering expenses. Instead, KURA SUSHI passed these operating costs off onto Mr. Spencer and other aggrieved employees.

Thus, KURA SUSHI 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. Spencer 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).

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

Accordingly, Mr. Spencer 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. Spencer, 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 KURA SUSHI for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

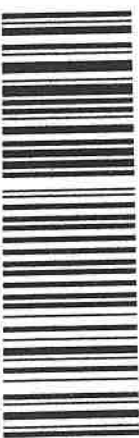
Best Regards,

A handwritten signature in black ink, appearing to read "B. Waldrop", written over a horizontal line.

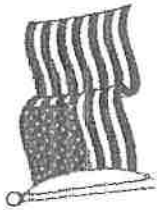
Brooke Waldrop

Copy: KURA SUSHI USA, INC. (via U.S. Certified Mail); Marisol C. Mork, Squire Patton Boggs (US) LLP, 555 South Flower Street, 31st Floor, Los Angeles, California 90071 (via U.S. Certified Mail)

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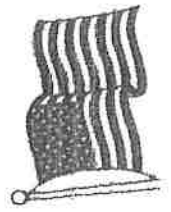
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555 South Flower Street, 31st Floor
Los Angeles, California 90071



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