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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9
10 **FOR THE COUNTY OF SAN DIEGO**

11 MATTEO GARCERAN, as an individual, on
behalf of himself, and all persons similarly
12 situated,

13 Plaintiff,

14 v.

15 CAFÉ TOPES, INC., a California company
16 authorized to do business in the state of
California; JACQUELYN BARILLE, an
17 individual; JOSEPH BARILLE, an
individual; and DOES 1 through 50 inclusive,
18

19 Defendants.

Case No. 37-2020-00024400-CU-OE-CTL

CLASS/REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE RELIEF
AND PENALTIES:**

- (1) **FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS OR
COMPENSATION IN LIEU
THEREOF
(Labor Code §§ 204, 226.7 and 512);**
- (2) **FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS OR
COMPENSATION IN LIEU
THEREOF
(Labor Code §§ 204 and 226.7);**
- (3) **FAILURE TO TIMELY PAY
MINIMUM, REGULAR, AND/OR
OVERTIME WAGES
(Labor Code §§ 204, 210, 510, 1194,
1197, 1197.1, 1198, and 1199);**
- (4) **CONVERSION**
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS EXPENSES
(Labor Code § 2802);**
- (6) **FAILURE TO MAINTAIN
ACCURATE RECORDS
(Labor Code §§ 226, 1174, and 1174.5);**

- (7) **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3 and 246(i));
- (8) **FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT**
(Labor Code §§ 201-203 and 210);
- (9) **UNFAIR COMPETITION LAW**
(Bus. & Prof. Code §§ 17200 *et seq.*); and
- (10) **PRIVATE ATTORNEYS GENERAL ACT OF 2004**
(Labor Code §§ 2698 *et seq.*).

DEMAND FOR JURY TRIAL

Plaintiff Matteo Garceran (“Plaintiff”) brings this class and representative action on behalf of himself and all persons similarly situated against Defendants Café Topes, Inc., Jacquelyn Barille, Joseph Barille, and DOES 1 through 50, inclusive (collectively, “Defendants”), on the following grounds:

INTRODUCTION

1. This action is brought by Plaintiff on behalf of himself and all other current or former non-exempt employees of Defendants in the state of California (“Café Employees”).

2. Plaintiff asserts that during the relevant time period, Defendants engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the California Industrial Welfare Commission’s (“IWC”) Wage Order No. 5-2001 to decrease their employment related costs and increase their profits by, among other things:

- a. Failing to provide the opportunity to take legally compliant meal periods or compensation in lieu thereof;
- b. Failing to authorize and permit legally compliant rest periods or compensation in lieu thereof;
- c. Failing to timely compensate for all hours worked, including minimum, regular, and overtime wages;
- d. Failing to timely pay all gratuities;
- e. Failing to maintain accurate gratuity records;

- f. Failing to reimburse for necessary business expenses;
- g. Failing to maintain accurate records;
- h. Failing to furnish accurate itemized wage statements;
- i. Failing to timely pay all wages due and owed upon separation of employment;
- j. Engaging in unlawful, unfair and/or fraudulent business practices; and
- k. Violating the Private Attorneys General Act of 2004 ("PAGA").

3. By and through this class and representative action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages, restitution, injunctive relief and penalties, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein and his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10. Pursuant to Code of Civil Procedure section 382, California Business and Professions Code ("Bus. & Prof. Code") section 17203, and Labor Code section 2698 *et seq.*, Plaintiff brings this action on behalf of himself, and on behalf of all Café Employees, as defined herein.

6. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the county of San Diego, as well as throughout the state of California, through their acts and omissions, and by their violations of the Labor Code and Bus. & Prof. Code.

7. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395(a). Defendant Café Topes, Inc. transacts business in San Diego County and is otherwise within this Court's jurisdiction for purposes of service of process. Defendants Jacquelyn Barille and Joseph Barille reside in San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the county of San Diego and the state of California.

8. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class and representative action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

THE PARTIES

I. PLAINTIFF

9. Plaintiff Matteo Garceran at all material times mentioned herein:

- a. Was a resident of the county of San Diego;
- b. Was employed by Defendants from approximately January 29, 2020 to February 23, 2020 as a waiter at Defendants' restaurant, Café Topes, located in Carlsbad, California;
- c. Engaged in work for Defendants in the county of San Diego, California;
- d. Was paid an hourly wage on a bi-weekly basis, plus tips;
- e. Was typically scheduled to work Thursday, Saturday, and Sunday from 8:30 a.m. to 3:00 p.m.;
- f. Was classified by Defendants as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- g. Was not provided with the opportunity to take legally compliant meal periods or compensation in lieu thereof;
- h. Was not authorized and permitted to take legally compliant rest periods or compensation in lieu thereof;
- i. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time worked, including time spent working off the clock and time spent working through meal periods;
- j. Was not timely paid all gratuities owed to him;
- k. Contends his gratuity records were not accurately maintained by Defendants;
- l. Was not timely furnished with a record of gratuities earned and paid;

- m. Was required by Defendants to use his personal cell phone to download and access an application called “HomeBase,” which was used to check work schedules, clock in and out, and communicate with supervisors;
- n. Was not reimbursed for all necessary business expenses;
- o. Contends his employee records were not accurately maintained by Defendants;
- p. Was not furnished with accurate itemized wage statements;
- q. Was not timely paid all wages due and payable upon separation of employment;
- r. Was retaliated against by Defendants after making a good-faith complaint about not receiving legally compliant meal and/or rest periods;
- s. Was subject to Defendants’ unlawful, unfair, and fraudulent business practices;
- t. Is a member of the class defined herein;
- u. Is an “aggrieved employee” as defined by Labor Code section 2699(c); and
- v. Complied with all requirements outlined in Labor Code sections 2698 *et seq.*

II. DEFENDANTS

10. Defendant Café Topes, Inc. is a California corporation authorized to do business, and actually doing business, in the state of California. Café Topes, Inc. operates a restaurant entitled Café Topes located in Carlsbad, California that specializes in breakfast and lunch items. Café Topes regularly serves customers from 7:00 a.m. to 2:00 p.m., Tuesday through Sunday. Café Topes, Inc. is owned, operated and/or managed by Defendants Jacquelyn Barille and Joseph Barille.

11. Defendant Jacquelyn Barille is believed to be the current Chief Financial Officer and Secretary of Café Topes. Defendant Jacquelyn Barille is believed to reside in Bonsall, California and to maintain an office in Carlsbad, California.

12. Defendant Joseph Barille is believed to be the current Chief Executive Officer and Director of Café Topes. Defendant Joseph Barille is believed to reside in Bonsall, California and to maintain an office in Carlsbad, California.

13. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section

1 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously
2 named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that
3 basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged
4 in this Complaint.

5 14. At all times mentioned herein, the acts alleged to have been done and/or caused by the
6 named Defendants are also alleged to have been done and/or caused by the fictitiously named
7 defendants, and by each of their agents and/or employees who acted within the scope of their agency
8 and/or employment.

9 15. At all times mentioned herein, each named Defendant, including each fictitiously named
10 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
11 defendants.

12 16. At all times mentioned herein, each named Defendant, including each fictitiously named
13 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the
14 other defendants, and in doing the things alleged herein acted within the course and scope of such
15 agency, employment, alter-ego and/or in furtherance of the joint venture.

16 17. At all times mentioned herein, the acts and/or omissions of each of the named
17 Defendants, including each fictitiously named defendant, concurrently contributed to the various acts
18 and/or omissions of each and every one of the other defendants, including each fictitiously named
19 defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of
20 the named Defendants, including each fictitiously named defendant, approved of, condoned, and/or
21 otherwise ratified each and every one of the acts and/or omissions complained herein. Each named
22 defendant, including each fictitiously named defendant, were and are acting with authority of each and
23 every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

24 18. At all times mentioned herein there was a unity of interest and ownership between each
25 named Defendant, including each fictitiously named defendant, such that all defendants acted as a single
26 employer of Plaintiff and all other Café Employees.

27 19. At all times mentioned herein each named Defendant, including each fictitiously named
28 defendant, exercised supervision and control over the working conditions of Plaintiff and all other Café

Employees, including, but not limited to, implementing standard policies and procedures.

FACTUAL ALLEGATIONS

20. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

21. Plaintiff was employed by Defendants as a waiter from about January 29, 2020 to February 23, 2020 at Café Topes, a restaurant located in Carlsbad, California. As a waiter, Plaintiff's job duties included, but were not limited to, taking orders, serving food and beverages, and providing excellent customer service. During his employment, Plaintiff was classified by Defendants as a non-exempt employee and paid an hourly rate of \$12.00 per hour, in addition to receiving tips. Plaintiff typically worked three (3) days per week from 8:30 a.m. to 3:00 p.m., for a total of approximately 19.5 hours per week. Plaintiff was paid on a bi-weekly basis.

22. Plaintiff asserts that Defendants have employed, and will continue to employ, several Café Employees throughout San Diego County and in the state of California.

23. Plaintiff alleges that all Café Employees are categorized as non-exempt employees, earn an hourly wage, plus tips, and are paid on a bi-weekly basis.

24. Plaintiff further alleges that all Café Employees, including Plaintiff, regularly work four (4) or more hours a day.

25. Plaintiff contends that he and all other Café Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures guidelines and/or culture described herein.

26. Plaintiff further alleges that he and all other Café Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

27. Plaintiff asserts that Defendants have a policy, practice, procedure, guideline and/or culture of understaffing its restaurant in order to, among other things, decrease their employment related costs and increase their profits.

28. Plaintiff contends that Defendants did not, and do not, have a policy, practice, procedure, guideline and/or culture of providing all Café Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before their fifth (5th) hour of work when they worked five (5) or

1 more hours in a day. Similarly, Plaintiff contends that Defendants did not, and do not have a policy,
2 practice, procedure, guideline and/or culture of providing all Café Employees with the opportunity to
3 take a second uninterrupted, thirty (30) minute off-duty meal period when they worked more than ten
4 (10) hours in a day.

5 29. Plaintiff asserts that Defendants did not, and do not, have a policy, practice, procedure,
6 guideline and/or culture of obtaining the consent necessary to waive a meal period, when Plaintiff and/or
7 other Café Employees worked no more than six (6) hours in a day. Plaintiff also asserts that Defendants
8 did not, and do not, have a policy, practice, procedure, guideline and/or culture of obtaining the consent
9 necessary to waive a meal period when they worked no more than twelve (12) hours.

10 30. Plaintiff alleges that Defendants did not, and do not have a policy, practice, procedure,
11 guideline and/or culture of paying meal period premiums to Plaintiff and other Café Employees for meal
12 periods that do not comply with California law.

13 31. Plaintiff contends, for example, that due in part to Defendants' understaffing of its
14 restaurant, Plaintiff and other Café Employees were regularly directed, pressured, compelled and/or
15 otherwise coerced to work through their meal periods in order to meet the needs of the restaurant and its
16 customers. Plaintiff also contends that on the rare occasion he and other Café Employees were provided
17 with the opportunity to take a meal period, their meal periods were consistently untimely, interrupted by
18 directives to perform work related duties like taking orders and serving customers, and/or less than thirty
19 (30) minutes due to in part to the lack of coverage available. On multiple occasions, Plaintiff was
20 instructed, pressured and/or otherwise compelled to engage in work, such as take orders and serve
21 customers, during meal periods. Plaintiff contends that when he and other Café Employees requested to
22 take their meal periods, their superiors, including but not limited to Defendant Joseph Barille, told them
23 not to take their meal periods because they were going to be "cut soon" and threatened to not pay them
24 for their time worked if they chose to take their meal periods.

25 32. Plaintiff alleges that he verbally complained to Defendants and his superiors on multiple
26 occasions about not being provided with the opportunity to take uninterrupted, off-duty thirty (30)
27 minute meal periods before the end of his fifth (5th) hour of work during his employment.
28

33. Plaintiff asserts that Defendants knew or should have known that Plaintiff and other Café Employees were not provided with the opportunity to take legally compliant meal periods due in large part to Defendants' understaffing of the restaurant and Plaintiff's verbal complaints.

34. Plaintiff contends that although he and other Café Employees were not provided with legally compliant meal periods, he and all other Café Employees were not compensated for non-compliant meal periods as provided by California law.

35. Plaintiff further alleges that Defendants did not, and do not have a policy, practice, procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other Café Employees to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major fraction thereof.

36. Plaintiff contends that Defendants did not, and do not have a policy, practice, procedure, guideline and/or culture of paying rest period premiums to Plaintiff and other Café Employees for rest periods that do not comply with California law.

37. Plaintiff contends that he and other Café Employees were regularly instructed, directed, pressured, compelled and/or otherwise coerced to work through their rest periods in order to meet the needs of the restaurant and its customers, as there were not enough employees to relieve Café Employees, like Plaintiff, for their rest periods. Plaintiff also contends that he and all other Café Employees regularly received rest periods that were untimely, interrupted by instructions to perform their job responsibilities like wait on tables and take orders, and/or less than ten (10) minutes due to in part Defendants' inadequate staffing of its restaurant.

38. Plaintiff asserts that when he and/or other Café Employees requested to take their rest periods, their superiors, including but not limited to Defendant Joseph Barille, told them they were not authorized to take their rest periods and threatened to shorten their shifts and to not compensate them for their scheduled hours if they went on break. Consequently, Plaintiff and other Café Employees rarely received legally compliant rest periods.

39. Plaintiff alleges that he verbally complained to Defendants and his superiors on multiple occasions about not being authorized and permitted to take uninterrupted, off-duty ten (10) minute rest periods for every four (4) hours worked during his employment.

1 40. Plaintiff asserts that Defendants knew or should have known that Plaintiff and other Café
2 Employees were not authorized and permitted to take legally complaint rest periods because, among
3 other things, Defendants, including Defendant Joseph Barille, instructed, directed, pressured, compelled
4 and/or otherwise coerced Café Employees, including Plaintiff, to work through their rest periods.

5 41. Plaintiff contends that although he and other Café Employees were not provided with
6 legally compliant rest periods, he and all other Café Employees were not compensated for non-
7 compliant rest periods as required by California law.

8 42. Plaintiff further contends that Defendants have a policy, practice, procedure, guideline,
9 and/or culture of not timely compensating him and all other Café Employees minimum, regular, and/or
10 overtime wages for all time engaged in work on behalf of Defendants.

11 43. Plaintiff contends that due in part to the understaffing of the restaurant, he and other Café
12 Employees were directed, pressured, compelled and/or otherwise coerced to regularly perform their job
13 duties, such as assisting customers and serving food, while clocked out for their meal periods.
14 Defendants improperly considered this time as non-compensable and failed to provide any
15 renumeration.

16 44. Plaintiff also asserts that he and other Café Employees were not compensated for time
17 they spent using the “HomeBase” application for work-related tasks outside of their on-the-clock work
18 hours, including, but not limited to, reviewing work schedules and communicating with Defendants
19 about work related activities. As a result, Plaintiff and other Café Employees were not compensated for
20 all of the time they spent under the employer’s control.

21 45. Plaintiff contends that due to Defendants’ failure to appropriately account for all time
22 worked, Plaintiff and other Café Employees did not accrue the mandated one hour paid sick leave for
23 every thirty (30) hours worked.

24 46. Plaintiff alleges that Defendants had, and continue to have a policy, practice, procedure
25 guideline, and/or culture of not timely paying Plaintiff and other Café Employees all gratuities owed to
26 them.

1 47. Plaintiff asserts that Defendants had, and continue to have a policy, practice, procedure,
2 guideline and/or culture of instituting a tip pool. Defendants' did not have a written tip pool agreement
3 and Plaintiff further alleges that Defendants' did not distribute tips in a fair and reasonable manner.

4 48. Plaintiff also asserts that Defendants' tip pool policy, practice, procedure, guideline
5 and/or culture is unlawful and improper because Defendants improperly share tips earned by Café
6 Employees with owners, managers, and/or supervisors of Defendants. As a result of Defendants'
7 unlawful and improper tip pooling policy, practice, procedure, guideline and/or culture, Café
8 Employees, including Plaintiff, were not timely paid all gratuities, including those left on credit cards,
9 given to them by patrons.

10 49. Plaintiff further alleges that Defendants did not, and do not have a policy, practice,
11 procedure, guideline and/or culture of maintaining accurate records of all gratuities received in violation
12 of California law.

13 50. Plaintiff contends that Defendants had, and continue to have a policy, practice, procedure,
14 guideline and/or culture of failing to include all gratuities earned on the wage statements furnished to
15 Café Employees. Plaintiff also alleges that Defendants did not permit him and/or other Café Employees
16 to inspect their gratuity records after a reasonable request. Plaintiff further asserts that Defendants failed
17 to provide him with an itemized statement of his gratuities despite making several requests.

18 51. As a policy, practice, procedure, guideline, and/or culture, Plaintiff asserts that
19 Defendants failed to reimburse all Café Employees for all necessary expenses that were incurred in the
20 discharge of their job duties. For example, Defendants required Plaintiff and other café Employees to
21 download an application called "HomeBase" onto their personal cell phones for work-related purposes,
22 including but not limited to, reviewing work schedules and paystubs, clocking in and out, and
23 communicating with management. Despite the requirement that Café Employees use their personal cell
24 phones for work purposes, Plaintiff and other Café Employees did not receive any reimbursement for the
25 use of their personal cell phones in connection with the work performed on behalf of Defendants.

26 52. Plaintiff asserts that Defendants have a policy, practice, procedure, guideline, and/or
27 culture of failing to maintain accurate employment records for Café Employees, including Plaintiff. For
28 instance, Plaintiff contends that due to Defendants' failure to record the proper beginning and end of

1 each work period, the gratuities paid to employees by patrons, and the total hours of compensable time
2 worked, such as time spent working during meal periods, Defendants knowingly and intentionally failed
3 to maintain accurate employee and/or payroll records as required by California law.

4 53. Plaintiff alleges that Defendants had, and continue to have a policy, practice, procedure,
5 guideline and/or culture of furnishing wage statements to Café Employees that do not accurately reflect
6 the items required by Labor Code section 226(a), including but not limited to, gross wages earned, total
7 hours worked by the employees, all deductions, net wages earned, and all applicable hourly rates. For
8 example, the wage statements furnished by Defendants to Café Employees did not properly reflect the
9 actual number of hours worked and/or the various rates of pay, including overtime, and the gross and net
10 wages earned. Defendants also failed to include the applicable rate of pay and the total hours of
11 compensable time worked, including, but not limited to, time spent working while clocked out during
12 meal periods and time spent utilizing the “HomeBase” application while off-the-clock. The wage
13 statements furnished to Café Employees also improperly deducted gratuities from Café Employees’
14 wages, thereby providing an inaccurate record of all gratuities earned by and paid to Café Employees.
15 Moreover, the wage statements did not include accrued paid sick leave hours; accordingly, Defendants
16 failed to provide Café Employees with a written notice of the amount of paid sick leave available, as
17 required by Labor Code section 246(i).

18 54. Plaintiff contends that Defendants had, and continue to have a policy, practice, procedure,
19 guideline and/or culture of failing to timely pay all wages due and owing upon termination and/or
20 separation of employment. For instance, despite being terminated on or about February 23, 2020,
21 Defendants did not furnish Plaintiff with his final paycheck until February 26, 2020. The final paycheck
22 did not include all wages due and owed, all gratuities earned, and the necessary waiting time penalties.

23 55. Plaintiff also asserts that as a result of Defendants’ failure to timely and appropriately
24 compensate Café Employees, including Plaintiff, Defendants willfully failed to timely pay all wages due
25 and owed to Plaintiff and other former Café Employees who separated from their employment during
26 the relevant statutory period. Plaintiff further alleges that Defendants have a policy, practice, procedure,
27 guideline, and/or culture of failing to pay the appropriate waiting time penalties to Café Employees as
28 provided under California law.

1 56. Plaintiff contends that Defendants had, and continue to have a policy, practice, procedure,
2 guideline, and/or culture of retaliating against Café Employees, such as Plaintiff, who make good faith
3 complaints regarding their employment rights. For instance, Plaintiff was terminated from his
4 employment after making a good-faith complaint to his manager and Defendant Joseph Barille about not
5 regularly receiving legally compliant meal and/or rest periods.

6 57. On March 26, 2020, Plaintiff submitted written notice to the California Labor and
7 Workforce Development Agency (“LWDA”) and Defendants informing them of Defendants’ alleged
8 violations of the Labor Code under the PAGA (codified in Labor Code sections 2698 *et seq.*), including
9 the facts and theories to support each violation. A true and correct copy of the March 26, 2020, written
10 notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

11 58. The LWDA had 65 days to provide notice of whether it intended to investigate the
12 alleged violations. To date, the LWDA has not provided notice of whether it intends to investigate the
13 alleged violations of the Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does
14 so pursue, the asserted claims in a representative action in his representative capacity on behalf of
15 himself, all other Café Employees, the general public and the state of California as permitted by Labor
16 Code section 2699.3.

17 59. Plaintiff further believes that additional violations may be discovered and therefore
18 reserves his right to allege additional violations of the law as investigation and discovery warrants. In
19 the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as
20 necessary.

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CLASS DEFINITIONS

60. Plaintiff's proposed class consists of the following:

All current or former non-exempt employees of Defendants in California during the period commencing on the date that is within four years prior to the filing of this Complaint through and including the last date of trial (hereinafter the "Class Period"). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the class against Defendants, the time period should be adjusted accordingly.

a. Plaintiff's proposed Waiting Time Penalties Sub-class consist of the following:

All current or former non-exempt employees of Defendants in California during the period commencing on the date that is within three years prior to the filing of this Complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the sub-class against Defendants, the time period should be adjusted accordingly.

61. Members of the class and/or sub-class are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

62. A more precise definition of the class and/or sub-class may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the class and/or create subclasses at any time prior to the court's order on Plaintiff's Motion for Class Certification as provided by law. (Cal. Rules Ct., R. 3.765(b).)

CLASS ALLEGATIONS

63. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

64. Plaintiff brings this action on behalf of himself and on behalf of all persons within the defined class and/or sub-class defined herein.

65. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code of Civil Procedure section 382 and California Civil Code ("Civil Code") section 1781, in that:

a. The persons who comprise the class and/or sub-class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a

class will benefit the parties and the Court;

- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the class and/or sub-class and will apply uniformly to every member of the class and/or sub-class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication;
- c. The parties opposing the class and/or sub-class have acted or have refused to act on grounds generally applicable to the class and/or sub-class, thereby making final injunctive relief or declaratory relief appropriate with respect to the class and/or sub-class as a whole; and
- d. Common questions of law and fact exist as to the members of the class and/or sub-class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of class members in individually controlling the prosecution or defense of separate actions;
 - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
 - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
 - iv. The likely difficulties in managing a class action.

66. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure 382 and Civil Code section 1781 because:

- a. Questions of law and fact common to the class and/or sub-class are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of class members' claims;
- c. The members of the class and/or sub-class are so numerous that it is impractical to bring all class members before the Court;

- d. Plaintiff's claims are typical of the claims of the class and/or sub-class;
- e. Class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the class and/or sub-class;
- g. Plaintiff can fairly and adequately protect the interests of the class and/or sub-class;
- h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the class and/or sub-class for the injuries sustained; and
- i. Defendants have acted or refused to act on grounds generally applicable to the class and/or sub-class, thereby making final injunctive relief appropriate with respect to the class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

OR COMPENSATION IN LIEU THEREOF

[Labor Code §§ 204, 226.7, 512, and the "Meal Periods" Section of IWC Wage Order No. 5-2001]

67. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

68. Labor Code section 512(a) mandates, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes" and "[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

69. The “Meal Periods” section of IWC Wage Order No. 5-2001 provides, in pertinent part,
“[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

70. The “Meal Periods” section of IWC Wage Order No. 5-2001 also states,

“[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

71. Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) further provides, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

72. A meal period generally comports with the requirements under California law if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036 [citing DLSE Opn. Letter No. 1996.07.12 (July 12, 1996) p.1].) Additionally, “an employer may not undermine formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [citations omitted].)

73. Plaintiff contends that Defendants did not, and do not have a policy, practice, procedure, guideline and/or culture of providing all Café Employees with the opportunity to take an uninterrupted, thirty (30) minute off-duty meal period before their fifth (5th) hour of work when they worked five (5) or

1 more hours, and a second (2nd) uninterrupted, thirty (30) minute off-duty meal period when they worked
2 more than ten (10) hours in a day.

3 74. Plaintiff asserts that Defendants do not, and did not, have a policy, practice, procedure,
4 guideline and/or culture of obtaining the consent necessary to waive a meal period.

5 75. Plaintiff alleges that he and other Café Employees did not typically receive legally
6 compliant meal periods due to Defendants' policy, practice, guideline and/or procedure of severely
7 understaffing its restaurant, mismanaging employee schedules, failing to provide adequate coverage for
8 its employees, and directing, pressuring and/or coercing Café Employees to prioritize customer service
9 over taking legally complaint meal periods. As a result, Plaintiff and other Café Employees often
10 experienced late and interrupted meal periods and/or missed meal periods all together.

11 76. Plaintiff believes that Defendants knew or should have known that Café Employees were
12 not provided with legally compliant meal periods, as Defendants regularly understaffed its restaurant
13 and directed, pressured and/or coerced Café Employees to fulfill restaurant needs while they were
14 clocked out for their meal periods.

15 77. Furthermore, Plaintiff made several verbal complaints to Defendants regarding his
16 inability to take uninterrupted, off-duty thirty (30) minute meal periods before the end of his fifth (5th)
17 hour of work.

18 78. Defendants also failed to pay the premium wage required by California law to Plaintiff
19 and other Café Employees for noncompliant meal periods.

20 79. Defendants' unlawful conduct caused Plaintiff and other Café Employees to suffer, and
21 current Café Employees will continue to suffer, damages in an amount which is presently unknown, but
22 which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at
23 trial.

24 80. Pursuant to Labor Code section 226.7(c) and IWC Order No. 5-2001, Plaintiff and other
25 Café Employees are entitled to, and seek to, recover the full amount of unpaid premium wages for non-
26 compliant meal periods.

27 81. Pursuant to Labor Code section 218.6, Plaintiff and other Café Employees are entitled to,
28 and seek to, recover prejudgment interest on the amount of premium wages owed.

82. Plaintiff, on behalf of himself and other Café Employees, is entitled to, and seeks to recover reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

83. Plaintiff, on behalf of himself and other Café Employees requests further relief as described in the below prayer.

SECOND CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

OR COMPENSATION IN LIEU THEREOF

[Labor Code §§ 204, 226.7 and the "Rest Periods" Section of IWC Wage Order No. 5-2001]

84. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

85. The "Rest Periods" section of IWC Wage Order No. 5-2001 states,

"[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

86. The "Rest Periods" section of IWC Wage Order No. 5-2001 further provides, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

87. Labor Code section 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code section 226.7(c) further provides, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

1 88. Defendants, as described herein, had, and continue to have a policy, practice, guideline
2 and/or procedure of severely understaffing its restaurant, mismanaging employee schedules, failing to
3 provide adequate coverage for its employees, and prioritizing customer service and restaurant needs over
4 Café Employees taking legally complaint rest periods.

5 89. Plaintiff alleges Defendants did not, and do not, have a policy, practice, procedure,
6 guideline and/or culture of authorizing and permitting Plaintiff and other Café Employees to take timely,
7 uninterrupted, off-duty rest periods that were at least ten (10) minutes in length for every four (4) hours
8 worked.

9 90. Plaintiff further contends that he and other Café Employees were regularly instructed,
10 directed, pressured, compelled and/or otherwise coerced by Defendants to engage in work during their
11 rest periods to complete customer orders and meet restaurant needs. As a result, Plaintiff and other Café
12 Employees rarely, if ever, received legally compliant rest periods.

13 91. Furthermore, when Plaintiff and/or other Café Employees requested to take their rest
14 periods, they were told by their superiors, including but not limited to, Defendant Joseph Barille, that
15 they were not permitted to take a rest period, and if they did take a rest period their shift would be
16 shortened without compensation for their scheduled hours. Accordingly, Plaintiff believes that
17 Defendants knew or should have known that Café Employees were not provided with legally compliant
18 rest periods.

19 92. Defendants failed to pay Plaintiff and other Café Employees the premium wage required
20 by California law for noncompliant rest periods.

21 93. Due to Defendants' unlawful conduct, Plaintiff and other Café Employees have suffered,
22 and will continue to suffer, damages in an amount which is presently unknown, but which exceeds the
23 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

24 94. According to Labor Code section 226.7(c) and IWC Wage Order No. 5-2001, Plaintiff
25 and other Café Employees are entitled to, and seek to recover the full amount of unpaid premium wages
26 for noncompliant rest periods.

27 95. Pursuant to Labor Code section 218.6, Plaintiff and other Café Employees are entitled to,
28 and seek to recover prejudgment interest on the amount of premium wages owed.

97. Plaintiff, on behalf of himself and other Café Employees requests further relief as described in the below prayer.

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

[Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, 1199, and the “Minimum Wages” and

“Hours and Days of Work” Sections of IWC Wage Order No. 5-2001]

98. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

99. Labor Code section 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Labor Code section 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code section 204(b)(1) states, “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.”

100. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

101. Labor Code section 1197.1 further provides,

“[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...”

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102. California law does not permit an employer to pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44.)

103. Labor Code section 1198 mandates, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Labor Code section 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code section 1198.

104. The “Minimum Wages” section of IWC Wage Order No. 5-2001 also states that, “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

105. Codifying the right to overtime compensation, Labor Code section 510 provides,

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

106. The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage Order No. 5-2001 mandate the same requirements as Labor Code section 510.

107. An employee may not waive his or her right to overtime compensation and any agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

108. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

109. Labor Code section 1194(a) mandates,

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

Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

110. Defendants had, and continue to have a policy, practice, procedure, guideline, and/or culture of not timely compensating Plaintiff and other Café Employees minimum, regular, and/or overtime wages for all the time spent working for and under the control of Defendants. For example, Plaintiff and other Café Employees were regularly directed, pressured, compelled, and/or otherwise coerced to perform work duties, such as waiting on tables and taking orders, while clocked out during their meal periods. However, Plaintiff and other Café Employees were not compensated for this time, as Defendants improperly considered the work they performed during their meal periods as non-compensable time and failed to provide any remuneration. Furthermore, Defendants have a policy, practice, procedure, guideline and/or culture of requiring all Café Employees to use an application known as “HomeBase” to check their work schedules, review paystubs, and communicate with management outside of their on-the-clock work hours. Because Defendants did not compensate Plaintiff and other Café Employees for the required time spent utilizing the “HomeBase” application for work-related duties, Defendants failed to compensate Café Employees for all hours worked.

111. By virtue of Defendants’ unlawful failure to compensate Plaintiff and other Café Employees for their time worked, Café Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

112. Having received less than the legal minimum wage and/or applicable rate of overtime compensation, Plaintiff and other Café Employees are entitled to and now seek to recover all wages and penalties owed, including penalties available under Labor Code sections 210 and 558, as well as interest and reasonable attorneys’ fees and costs pursuant to Labor Code sections 218.5 and 1194 and Code of Civil Procedure section 1021.5.

113. Plaintiff, on behalf of himself and other Café Employees requests further relief as described in the below prayer.

FOURTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

CONVERSION

114. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

115. Conversion is defined under California law as “the wrongful exercise over the property of another.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) In order to establish a claim of conversion, the following three elements must be met: “(1) the plaintiff’s ownership or right to possession of the property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and (3) damages.” (*Ibid.*) Moreover, the plaintiff must not consent, either expressly or impliedly, to the taking, use, or disposition of his or her property by the defendant. (See *Farrington v. A. Teichert & Son, Inc.* (1943) 59 Cal.App.2d468, 474.)

116. To demonstrate a conversion claim, “[i]t is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converted has applied the property to his own use.” (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1507.) Thus, “any act of dominion wrongfully exerted over the personal property of another inconsistent with the owner’s rights thereto constitutes conversion.” (*Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38, 50.)

117. A plaintiff’s generalized claim for money is not a cognizable conversion claim, as “[m]oney cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment.” (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 395 [internal citations omitted].) Accordingly, the California Supreme Court has consistently held employees may bring a conversion claim for the misappropriation of gratuities by their employers. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1155 “[w]hen a patron leaves a gratuity for an employee (or employees), it arguably qualifies as a specific sum of money, belonging to the employee,

1 that is capable of identification and separate from the employer's own funds; indeed, the employee (or
2 employees) for whom it was left has ownership of the gratuity by statute."]; see also *Lu v. Hawaiian*
3 *Gardens Casino* (2010) 50 Cal.4th 592, 603-04 ["[t]o the extent that an employee may be entitled to
4 certain misappropriated gratuities, we see no apparent reason why other remedies, such as a common
5 law action for conversion, may not be available under appropriate circumstances."].)

6 118. Plaintiff claims that Defendants wrongfully exercised control over gratuities paid to him
7 and other Café Employees by patrons at Defendants' restaurant.

8 119. Plaintiff alleges that he and other Café Employees owned, possessed, and/or had a right
9 to possess all gratuities given to them by patrons pursuant to Labor Code section 351, which provides
10 that "[e]very gratuity is hereby declared to be the sole property of the employee or employees to whom
11 it was paid, given, or left for."

12 120. Plaintiff attests that Defendants intentionally and substantially interfered with the
13 gratuities owned, possessed, and/or entitled to Plaintiff and other Café Employees by taking possession
14 of the gratuities and/or preventing Café Employees from having access to their gratuities. As part of
15 Defendants' unlawful and improper tip pool policy, practice, procedure, guideline and/or culture,
16 Defendants took possession, assumed control over, and/or applied the gratuities for its own use by
17 sharing tips earned by Café Employees with Defendants' owners, managers, and/or supervisors.

18 121. Furthermore, Defendants unlawfully and improperly deducted gratuities earned by
19 Plaintiff and Café Employees from their wages, thereby preventing Café Employees from having access
20 to all gratuities given to them by patrons.

21 122. Plaintiff further claims that he and other Café Employees did not consent to Defendants'
22 intentional and substantial interference with their gratuities.

23 123. Plaintiff alleges that he and other Café Employees were harmed, and continue to be
24 harmed, as a result of Defendants' intentional and substantial interference with their gratuities, as
25 Defendants deprived Café Employees of timely payment of all gratuities owed to them under California
26 law.

27 124. Plaintiff further alleges that Defendants' conduct was a substantial factor in causing
28 Plaintiff's and other Café Employees' harm. But for Defendants' unlawful and improper tip pool policy,

1 practice, procedure, guideline and/or culture, Plaintiff and other Café Employees would not have been
2 deprived of all gratuities paid to them by patrons.

3 125. Due to Defendants’ unlawful conduct described herein, Plaintiff and other Café
4 Employees have suffered, and will continue to suffer, damages in an amount which is presently
5 unknown, but which exceeds the jurisdictional limits of this Court and will be ascertained according to
6 proof at trial.

7 126. Plaintiff, on behalf of himself and other Café Employees, is entitled to, and seeks to
8 recover reasonable attorneys’ fees and costs as provided by Code of Civil Procedure section 1021.5 and
9 Civil Code section 3336.

10 127. Plaintiff, on behalf of himself and other Café Employees, requests further relief as
11 described in the below prayer.

12 **FIFTH CAUSE OF ACTION**

13 **(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)**

14 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

15 **[Labor Code § 2802]**

16 128. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
17 paragraphs of this Complaint.

18 129. Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify
19 his or her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
21 employer.”

22 130. Labor Code section 2802(b) further states, “[a]ll awards made by a court or by the
23 Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this
24 section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the
25 date on which the employee incurred the necessary expenditure or loss.”

26 131. Furthermore, Labor Code section 2802(c) provides, “[f]or purposes of this section, the
27 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to,
28 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

132. As a policy, practice, procedure, guideline and/or culture, Defendants required its Café Employees to install on their personal cellphones an application called “HomeBase” for work-related purposes, including, but not limited to, checking work schedules, reviewing paystubs, clocking in and out for shifts, and communicating with management.

133. Defendants do not reimburse its Café Employees a reasonable percentage of their personal cellular bill, nor do Defendants reimburse its Café Employees for the cost of the cellphone for the installation, storage, and/or use of the “HomeBase” application, despite requiring the installation and use of “HomeBase” on their personal cellphones to fulfill work-related responsibilities.

134. Plaintiff and other Café Employees are entitled to and seek reimbursement of their necessary expenditures, plus interest, including reasonable attorneys’ fees and costs pursuant to Labor Code section 2802.

135. Plaintiff and other Café Employees are also entitled to, and seek to recover, reasonable attorneys’ fees and costs under Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

136. Plaintiff, on behalf of himself and other Café Employees, requests further relief as described in the below prayer.

SIXTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

FAILURE TO MAINTAIN ACCURATE RECORDS

[Labor Code §§ 226, 1174, 1174.5, and the “Records” Section of IWC Wage Order No. 5-2001]

137. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

138. Pursuant to Labor Code section 226(a), an employer must keep a copy of the wage statements furnished and the record of deductions on file for at least three years.

139. Labor Code section 1174(d) further mandates, in pertinent part, “[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments.”

1 140. The “Records” section of IWC Wage Order No. 5-2001 states that every employer shall
2 keep accurate information with respect to each one of its employees, including time records showing
3 when the employee begins and ends each work period, meal periods, total daily hours worked, total
4 wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

5 141. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
6 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per
7 pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a
8 violation of Labor Code section 1174(d).

9 142. Labor Code section 226.7(e)(1) further provides,

10 “[a]n employee suffering injury as a result of a knowing and intentional
11 failure by an employer to comply with subdivision (a) [of Labor Code § 226]
12 is entitled to recover the greater of all actual damages or fifty dollars (\$50)
13 for the initial pay period in which a violation occurs and one hundred dollars
(\$100) per employee for each violation in a subsequent pay period, not to
exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
to an award of costs and reasonable attorney’s fees.”

14 143. Plaintiff alleges that Defendants, as described herein, had, and continue to have a policy,
15 practice, procedure, guideline, and/or culture of intentionally and willfully failing to maintain accurate
16 payroll and/or employee records that properly show the total number of hours worked, the proper
17 beginning and end of each work period, the gratuities received, and the wages earned and paid to
18 Plaintiff and other Café Employees, including the failure to record and compensate for time worked
19 while clocked out during meal periods, as Defendants knew that Café Employees were working off the
20 clock in order to fulfill customer orders and/or other restaurant needs.

21 144. Plaintiff and other Café Employees have suffered, and continue to suffer, injuries and
22 damages as a consequence of Defendants’ deliberate failure to maintain accurate records as required by
23 the Labor Code. Specifically, Plaintiff and other Café Employees were denied their legal right and
24 protected interest in having accurate and complete payroll records available to them.

25 145. Plaintiff and other Café Employees are entitled to and seek damages as outlined in Labor
26 Code section 226.7(e)(1).

27 146. Plaintiff, on behalf of himself and other Café Employees, is entitled to, and seeks to
28 recover reasonable attorneys’ fees and costs as provided by Code of Civil Procedure section 1021.5.

147. Plaintiff, on behalf of himself and other Café Employees requests further relief as described in the below prayer.

SEVENTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Labor Code §§ 226, 226.3, 246(i) and the “Records” Section of IWC Wage Order No. 5-2001]

148. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

149. Labor Code section 226(a) states, in pertinent part, that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

150. Labor Code section 226(e)(1) further provides,

“[a]n employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.”

151. Labor Code section 246(i) mandates,

“[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages. . . . The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.”

152. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

1 153. According to Labor Code section 266(h), “an employee may also bring an action for
2 injunctive relief to ensure compliance with this section and is entitled to an award of costs and
3 reasonable attorneys’ fees.”

4 154. Defendants’ policies, practices, procedures, guidelines and/or culture of inadequately
5 compensating Café Employees resulted in wage statements that were not properly reflective of gross
6 wages earned, all deductions, net wages earned, and/or all applicable hourly rates and the corresponding
7 number of hours worked at each hourly rate. Additionally, because Defendants did not permit Café
8 Employees to record their actual time worked, including, but not limited to, time spent working through
9 meal periods, the total regular and overtime hours worked are inaccurately listed on the wage
10 statements. Furthermore, the wage statements showed a deduction of gratuities from the earned wages of
11 Café Employees. As a result, Plaintiff and other Café Employees were unable to readily ascertain from
12 their wage statements whether they were properly compensated. Furthermore, due to Defendants’
13 policy, practice, procedure, guideline and/or culture of not timely paying Café Employees, including
14 Plaintiff, all gratuities given to them by patrons, and instead deducting gratuities from Café Employees’
15 wages, Defendants failed to provide an accurate record of all gratuities earned on the wage statements
16 furnished to Café Employees. The wage statements furnished to Café Employees by Defendants also
17 failed to indicate the amount of paid sick leave accrued and available for use.

18 155. Pursuant to California law, Plaintiff and other Café Employees have suffered injury
19 resulting from Defendants’ knowing and intentional failure to furnish accurate itemized wage
20 statements.

21 156. Plaintiff, on behalf of himself and other Café Employees, is entitled to, and seeks to
22 recover, liquidated damages as provided by Labor Code section 226(e).

23 157. Plaintiff and other Café Employees are entitled to, and seek to recover, civil penalties
24 pursuant to Labor Code section 226.3 for violations of Labor Code section 226(a).

25 158. Furthermore, pursuant to Labor Code section 226(h), Plaintiff and other Café Employees
26 are entitled to, and therefore seek, injunctive relief in order to ensure that Defendants comply with Labor
27 Code section 266.

159. Plaintiff and other Café Employees are further entitled to, and seek to recover, reasonable attorneys' fees and costs as provided under Labor Code section 266(h) and Code of Civil Procedure section 1021.5.

160. Plaintiff, on behalf of himself and other Café Employees requests further relief as described in the below prayer.

EIGHTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWED

UPON SEPARATION OF EMPLOYMENT

[Labor Code §§ 201-204 and 210]

161. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

162. Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

163. Labor Code section 202 further provides,

"[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

164. Labor Code section 203(a) states, in pertinent part,

"[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

165. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation."

166. Defendants had, and continue to have a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon termination and/or separation of

1 employment. For instance, despite being terminated on or about February 23, 2020, Defendants did not
2 furnish Plaintiff with his final paycheck until February 26, 2020. The final paycheck did not include all
3 wages due and owed, all gratuities earned, and the necessary waiting time penalties.

4 167. Plaintiff further contends that due to Defendants' failure to timely and appropriately
5 compensate Café Employees, including Plaintiff, Defendants willfully failed to timely pay all wages due
6 and owed to Plaintiff and other former Café Employees who separated from their employment during
7 the relevant statutory period.

8 168. Plaintiff also alleges that Defendants have a policy, practice, procedure, guideline, and/or
9 culture of failing to pay the appropriate waiting time penalties to Café Employees as provided under
10 California law.

11 169. Defendants knowingly failed to timely and appropriately compensate Plaintiff and other
12 Café Employees for all minimum, regular, and overtime wages and meal and/or rest period premium
13 wages, as described herein.

14 170. Although Defendants no longer employ a number of Café Employees, including Plaintiff,
15 Defendant has yet to pay all wages owed to former Café Employees, including Plaintiff, as required
16 under California law, as well as the required waiting time penalties.

17 171. As a consequence of Defendant's willful and deliberate refusal to render such wages,
18 Plaintiff and other affected Café Employees are entitled to, and thus seek, a maximum of thirty (30)
19 days' wages at their daily rate of pay as a waiting time penalty, pursuant to Labor Code section 203.

20 172. Plaintiff, on behalf of himself and other Café Employees, is also entitled to, and seeks to
21 recover reasonable attorneys' fees and costs as permitted by Labor Code section 218.5 and Code of Civil
22 Procedure section 1021.5.

23 173. Plaintiff, on behalf of himself and other Café Employees requests further relief as
24 described in the below prayer.

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NINTH CAUSE OF ACTION

(By Plaintiff Individually and Behalf of the Class Against Defendants and Does 1-50)

UNLAWFUL COMPETITION LAW

[Bus. & Prof. Code §§ 17200 *et seq.*]

174. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

175. As codified in Bus & Prof. Code sections 17200 *et seq.*, California’s Unfair Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or practice.”

176. A cause of action may be brought under the UCL if a practice violates some other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per se violation of Bus. & Prof. Code sections 17200 *et seq.* (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 “unlawful” violation. (*Farmers Ins. Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

177. The “unfair” prong of the UCL does not require a practice to be specifically proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the “unfair standard” is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-81.)

178. Under the UCL, a “fraudulent” business act or practice is one where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal. App. 4th 36, 49.) A showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent prong may be used to attack the deceptive manner in which otherwise lawful contract terms are presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under section 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

179. As discussed herein, Defendants’ business practices violate all three prongs of California’s UCL.

Unlawful

180. As described herein, Defendants violated the Labor Code by refusing to properly compensate Café Employees for all time worked. Failing to compensate employees for all time worked is a clear violation of California law, and thus a per se violation of the UCL. (*Cel-Tech Commc'ns, Inc.*, *supra*, 20 Cal.4th at 180.) Additionally, Defendants failed to compensate Café Employees premium wages for non-compliant meal and rest periods as provided by California law. Defendants' failure to timely pay all gratuities, deduction of gratuities from earned wages, failure to maintain accurate records of gratuities, failure to promptly pay wages owed upon termination, failure to reimburse for necessary business expenses and failure to maintain accurate records for Café Employees are also violations of California law. Therefore, Defendants have clearly engaged in unlawful business practices pursuant to Bus. & Prof. Code sections 17200 *et seq.*

Unfair

181. Defendants' practices of not permitting Café Employees to accurately record time work, coercing Café Employees to work off the clock and/or forcing Café Employees to forgo their rest periods in order to fulfill customer orders and/or perform other work duties are inherently unfair because Defendants knowingly prevent Café Employees from receiving adequate compensation for all time worked, in violation of California's policy of prompt payment of wages.

182. Defendants' failure to appropriately account for all time worked by Café Employees is a violation of the unfair prong of the UCL because Café Employees did not accrue the one hour paid sick leave for every thirty (30) hours worked they are entitled to under California law.

183. Defendants' practice of unlawfully deducting gratuities earned from wages earned by Café Employees is a violation of the unfair prong of the UCL because Café Employees were promised but did not earn an hourly wage plus gratuities.

184. Defendants' failure to reimburse Café Employees for expenses related to the installation and use of the "HomeBase" application on their personal devices constitutes an unfair practice as Defendants require Café Employees to install and use the application for work purposes.

185. Defendants' practice of failing to provide duty-free meal and rest periods to Café Employees, and threatening Café Employees with shortening their shifts if they do not work through

1 their rest periods, constitute unfair practices because Defendants knowingly strip Café Employees of the
2 rights afforded to them by the Labor Code.

3 186. Defendants also violate the unfair prong of the UCL by failing to pay premium wages to
4 Café Employees for non-compliant meal and rest periods.

5 187. Additionally, Defendants' retaliation and wrongful adverse employment action taken
6 against Plaintiff because he made a good-faith complaint about not receiving legally compliant meal and
7 rest periods violates the unfair prong of the UCL.

8 Fraudulent

9 188. Defendants' invalid tip pooling policy, practice, procedure, guideline and/or culture by
10 which Defendants unlawfully and improperly shared tips earned by Plaintiff and other Café Employees
11 with Defendants' owners, managers, and supervisors, constitutes a fraudulent business practice as it
12 knowingly and intentionally causes Café Employees to not timely receive all gratuities given to them by
13 patrons, as mandated by California law.

14 189. Defendants' practice of failing to maintain accurate records of all gratuities received by
15 Café Employees and/or failing to include all gratuities earned on wage statements furnished to Café
16 Employees also constitutes a fraudulent business practice because Café Employees are intentionally
17 misled as to whether they were paid all gratuities given to them by patrons.

18 190. Defendants' practice of failing to appropriately account for all time worked by Café
19 Employees constitutes a fraudulent business practice as it knowingly and intentionally causes Café
20 Employees to accrue less than the mandated one hour paid sick leave for every thirty (30) hours worked.

21 191. Defendants' practice of providing Plaintiff and other Café Employees with inaccurate
22 wage statements constitutes a fraudulent business practice as Plaintiff and other Café Employees are
23 likely to be, and actually are deceived, as to whether they were paid for all time worked.

24 192. Defendants' practice of failing to maintain accurate employee and/or payroll records is
25 also a fraudulent business practice as the inaccuracies intentionally misled Café Employees as to their
26 total hours worked and wages earned.

27 193. As a direct and proximate result of Defendants' unlawful, unfair and fraudulent business
28 practices, Plaintiff and other Café Employees have suffered injury-in-fact and have lost wages rightfully

1 owed to them.

2 194. Through its unlawful, unfair and fraudulent conduct, Defendants have been unjustly
3 enriched by receiving and continuing to receive benefits and profits at the expense of its Café
4 Employees. Therefore, pursuant to Bus. & Prof. Code sections 17200 *et seq.*, Defendants should be
5 enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and other Café
6 Employees the wages wrongfully withheld from them.

7 195. Moreover, the unlawful, unfair and fraudulent conduct alleged herein has continued, and
8 there is no indication that Defendants will refrain from such activity in the future, especially as
9 Defendants knowingly deter the accurate reporting of time worked. Plaintiff believes and alleges that if
10 Defendants are not enjoined from the conduct described herein, they will continue to violate California
11 law at the expense of its Café Employees. Accordingly, Plaintiff requests that the court issue a
12 preliminary and permanent injunction against Defendants.

13 196. Plaintiff and other Café Employees are further entitled to, and seek to recover, reasonable
14 attorneys' fees and costs as provided under Code of Civil Procedure section 1021.5. (*Walker v.*
15 *Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1179.)

16 197. Plaintiff, on behalf of himself and other Café Employees requests further relief as
17 described in the below prayer.

18 **TENTH CAUSE OF ACTION**

19 **(By Plaintiff in his Representative Capacity Against Defendants and Does 1-50)**

20 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 **[Labor Code §§ 2698 *et seq.*]**

22 198. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
23 paragraphs of this Complaint.

24 199. Pursuant to the PAGA, any provision of the Labor Code allowing for a civil penalty to be
25 assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards,
26 agencies, or employees, for a violation of the Labor Code, may be recovered through a civil action
27 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
28 pursuant to the procedures specified in Labor Code section 2699.3.

200. All civil penalties recovered are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees pursuant to Labor Code section 2699(i).

201. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with the LWDA, Defendants were Plaintiff's and all other Café Employees' employer or person(s) acting on behalf of Plaintiff's employer either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code sections 558 and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

202. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by the alleged violators, Defendants, within the past year and suffered one or more violations of the Labor Code, and therefore is properly suited to represent the interests of other Café Employees.

203. Plaintiff alleges that all other Café Employees are also "aggrieved employees" under the PAGA because they were employed by Defendants and have experienced one or more of the alleged violations outlined herein.

204. Plaintiff has complied with the notice requirements outlined in Labor Code section 2699.3 and therefore exhausted his administrative remedies. On March 26, 2020, Plaintiff submitted notice to the LWDA and Defendants informing them of Defendants' alleged Labor Code violations pursuant to PAGA. (Exhibit 1.) Under the statute, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of whether it intends to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to Labor Code sections 2699 and 2699.3.

205. As set forth herein, Defendants have committed, and continues to commit, numerous violations for which the Labor Code and IWC Wage Order No. 5-2001 entitles Plaintiff in his representative capacity, to recover civil penalties, on behalf of himself and all other Café Employees and

1 the general public, as well as attorneys' fees and costs, against Defendants for the alleged violations of
2 the Labor Code, described herein.

3 206. Plaintiff, in his representative capacity, on behalf of himself and all other Café
4 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based
5 on violations of the following Labor Code and/or IWC Wage Order provisions:

- 6 a. Failure to provide the opportunity to take legally compliant meal periods or
7 compensation in lieu thereof in violation of Labor Code sections 204, 226.7, 512
8 and the "Meal Periods" section of IWC Wage Order No. 5-2001;
- 9 b. Failure to authorize and permit legally compliant rest periods or compensation in
10 lieu thereof in violation of Labor Code sections 204, 226.7 and the "Rest Periods"
11 section of IWC Wage Order No. 5-2001;
- 12 c. Failure to timely pay minimum, regular, and/or overtime wages in violation of
13 Labor Code sections 204, 210, 510, 1194, 1197, 1197.1, 1198, 1199 and the
14 "Minimum Wages" and "Hours and Days of Work" sections of IWC Wage Order
15 No. 5-2001;
- 16 d. Failure to timely pay gratuities in violation of Labor Code sections 351 and 354;
- 17 e. Failure to maintain accurate records of gratuities in violation of Labor Code
18 sections 353 and 354;
- 19 f. Failure to reimburse for necessary work expenses in violation of Labor Code
20 section 2802;
- 21 g. Failure to maintain accurate records in violation of Labor Code sections 226(a),
22 1174, 1174.5 and the "Records" section of IWC Wage Order No. 5-2001;
- 23 h. Failure to furnish accurate itemized wage statements in violation of Labor Code
24 sections 226, 226.3, 246(i) and the "Records" section of IWC Wage Order No. 5-
25 2001;
- 26 i. Failure to timely pay all wages due and owed upon separation of employment in
27 violation of Labor Code sections 201-204 and 210; and
28

j. Engaging in retaliation against employees who make good faith complaints regarding their employment rights (e.g. those who exercised their rights to complain about not receiving meal and rest periods) in violation of Labor Code sections 98.6, 1102.5, and 6310.

207. Labor Code section 98.6(a)(3) imposes a civil penalty, not to exceed \$10,000, per employee for each violation of Labor Code section 98.6(a). This civil penalty is in addition to the civil penalty provided under Labor Code section 1102.5(f), which provides “an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation” of Labor Code section 1102.5(b). Therefore, Plaintiff and other Café Employees are entitled to and seek the described civil penalty.

208. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty. Therefore, Plaintiff and other Café Employees are entitled to and do seek such civil penalties.

209. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code section 226(a). Therefore, Plaintiff and other Café Employees are entitled to and seek the described civil penalty.

210. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Therefore, Plaintiff and other Café Employees are entitled to and do seek such civil penalties.

211. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty that would

1 be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

2 Therefore, Plaintiff and other Café Employees are entitled to and seek the described civil penalty.

3 212. Labor Code section 1197.1 imposes upon Defendants, for each initial violation of wage
4 and hour laws, a penalty of \$100 for each underpaid employee for each pay period for which the
5 employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid
6 wages and liquidated damages pursuant to Labor Code section 1194.2, which states: “[i]n any action
7 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than
8 the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to
9 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
10 Labor Code section 1197.1 further provides that for each subsequent violation for the same specific
11 offense, the employer shall pay \$250 for each underpaid employee for each pay period for which the
12 employee is underpaid regardless of whether the initial violation is intentionally committed. This
13 amount is also in addition to the amount sufficient to recover underpaid wages, liquidated damages
14 pursuant to Section 1194.2 and any applicable penalties imposed pursuant to Labor Code section 203.
15 Therefore, Plaintiff and other Café Employees are entitled to and seek the described civil penalty.

16 213. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee
17 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all
18 Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code
19 sections 98.6, 201, 202, 203, 204, 223, 226(a), 226.7, 351, 353, 510, 512, 1102.5, 1174, 1194, 1197,
20 1197.1, 1198, 1199, 2802 and 6310. Plaintiff and other Café Employees are entitled to, and therefore
21 seek, the above described civil penalty.

22 214. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action
23 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As
24 such, Plaintiff, in his representative capacity on behalf of himself and all other Café Employees, is
25 entitled to, and therefore seeks, attorneys’ fees and costs.

26 215. Plaintiff, in his representative capacity on behalf of himself and all other Café
27 Employees, is entitled to and seeks recovery of reasonable attorneys’ fees as provided by Labor Code
28 section 218.5 and Code of Civil Procedure section 1021.5.

216. Plaintiff, in his representative capacity on behalf of himself and all other Café Employees of Defendants in California, requests further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiff prays for judgement against Defendants in favor of the class and representative action as follows:

- a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;
- b. For the attorneys appearing on the above caption to be named class counsel;
- c. For all wages and benefits due to Plaintiff and all other Café Employees currently or formerly employed by Defendant pursuant to California law;
- d. For all minimum and regular wages and/or overtime compensation owed pursuant to Labor Code sections 510, 1194, 1197.1, and/or other applicable law;
- e. For premium wages pursuant to Labor Code section 226.7 and/or other applicable law;
- f. For unreimbursed business expenses pursuant to Labor Code section 2802 and/or other applicable law;
- g. For waiting time penalties pursuant to Labor Code section 203, and/or other applicable law;
- h. For damages, pursuant to Labor Code section 226 and/or other applicable law;
- i. For all liquidated damages, pursuant to Labor Code sections 226(e), 1194.4(a), 1197.1, and/or other applicable law;
- j. For any and all penalties available for the Labor Code violations alleged herein, including penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 1199, 2699(f) and/or other applicable law;
- k. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code section 2699(f);

- l. For a declaratory judgment that Defendants violated Labor Code sections 98.6, 201, 202, 203, 226, 226.7, 351, 354, 510, 512, 1102.5, 1197, 1198, 2802, and 6310, as well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission and/or other applicable law;
- m. For injunctive relief, pursuant to Labor Code section 266(h) and Bus. & Prof. Code section 17203, and/or other applicable law;
- n. For restitution for Defendants’ unfair, unlawful, and fraudulent business practices;
- o. For reasonable attorneys’ fees and costs of suit pursuant to Labor Code sections 218.5, 226(h), 226(e)(1), 1193.6, 1194, 2699(g) and 2802, Code of Civil Procedure section 1021.5, the “common fund” theory, the “substantial benefit” theory and/or other applicable law, theory or doctrine;
- p. For pre- and post- judgment interest as provided by California law;
- q. For appropriate equitable relief pursuant to California law; and
- r. For any other relief, the Court may deem as just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues triable to a jury.

Dated: July 15, 2020

GRAHAMHOLLIS APC

By: Monique R. Rodriguez
Graham S.P. Hollis
Vilmarie Cordero
Monique R. Rodriguez
Attorneys for Plaintiff Matteo Garceran

EXHIBIT 1

March 26, 2020

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Café Topes, Inc.
3091 Roosevelt Street, Suite A
Carlsbad, CA 92008

Café Topes, Inc.
c/o Jacquelyn Barille, Agent for Service of Process
1728 Dentro de Lomas
Bonsall, CA 92003

Jacquelyn Barille
Chief Financial Officer for Café Topes, Inc.
1728 Dentro de Lomas
Bonsall, CA 92003

Joseph Barille
Chief Executive Officer for Café Topes, Inc.
1728 Dentro de Lomas
Bonsall, CA 92003

**Re: Matteo Garceran's Wage and Hour Claims Against Café Topes, Inc.,
Jacquelyn Barille, and Joseph Barille**

Dear Labor and Workforce Development Agency, Café Topes, Inc., Jacquelyn Barille,
and Joseph Barille:

Please be advised that Matteo Garceran ("Claimant") has retained our firm to represent
him for various claims against Café Topes, Inc., Jacquelyn Barille, and Joseph Barille
(collectively, the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the
California Labor and Workforce Development Agency ("LWDA") and the Company of
the alleged California Labor Code ("Labor Code") violations Claimant claims that the
Company committed against him and all other current or former employees of the
Company in California during the relevant statutory period. Claimant provides this
notice, which includes the facts and theories to support his Labor Code violations

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

March 26, 2020

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alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent himself and all other current or former employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (referred to herein as the “aggrieved employees”).

FACTUAL BACKGROUND

Café Topes, Inc. is a restaurant located in Carlsbad, California that specializes in breakfast and lunch items, and is owned and operated by Jacquelyn Barille and Joseph Barille. Café Topes, Inc. is headquartered and has its principal place of business in Carlsbad, California.

The Company employed Claimant as a waiter from approximately January 29, 2020 to February 23, 2020, when he was wrongfully terminated in retaliation for his complaint about not receiving meal and rest periods. During his employment with the Company, Claimant typically worked Thursday, Saturday, and Sunday from 8:30 a.m. to 3:00 p.m., for a total of 15 to 18 hours per week. At all relevant times, Claimant was classified as a non-exempt employee and was paid an hourly rate of \$12.00 per hour, in addition to receiving tips. As a waiter, Claimant’s job duties consisted of taking orders, serving food and beverages, and providing excellent customer service, among other things.

Claimant alleges that the Company denied Claimant and other aggrieved employees in California specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed to provide Claimant and other aggrieved employees with legally compliant meal and/or rest periods or pay them meal and/or rest period premiums, failed to timely pay all minimum, regular, and overtime wages owed, failed to timely pay gratuities, failed to maintain accurate records of gratuities, failed to indemnify for necessary business expenses, failed to maintain accurate records, failed to issue accurate itemized wage statements, and failed to timely pay all wages due upon separation of employment. Upon information and belief, all policies, practices, guidelines, and/or procedures applicable to Claimant were also applicable to other aggrieved employees.

The Company did not provide Claimant and other aggrieved employees with 30-minute, off-duty meal periods and/or did not authorize and permit them to take legally compliant off-duty 10-minute rest periods for every four hours worked or major fraction thereof. Due to the Company’s understaffing and lack of coverage, Claimant and other aggrieved employees were regularly required to work through their meal and/or rest periods, and/or were not provided with meal and/or rest periods at all. For example, when Claimant and other aggrieved employees requested to take their rest periods, they were told by their supervisor that they were not allowed to take rest periods, and/or their shift would be cut short without being compensated for the entire time they were scheduled to work. Furthermore, due to the Company’s mismanagement of employee staffing and failure to schedule and/or provide compliant meal periods, Claimant and other aggrieved employees were forced to take late, short, interrupted, and/or on-duty meal periods. Claimant and, on information and belief, other aggrieved employees did not sign a meal period waiver or an on-duty meal agreement at any point during their employment. As a result of the Company’s illegal policies and procedures, Claimant and other aggrieved employees were regularly required to work

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through their meal and/or rest periods, take on-duty meal and/or rest periods, or were not provided with a meal and/or rest period at all.

Although Claimant and other aggrieved employees did not receive legally compliant meal and/or rest periods, the Company did not pay Claimant and, on information and belief, other aggrieved employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. As such, the Company owes Claimant and, on information and belief, other aggrieved employees a meal and/or rest period premium for each work day that Claimant and other aggrieved employees were not provided with a compliant meal and/or rest period.

Furthermore, Claimant and, on information and belief, other aggrieved employees were not paid all minimum, regular, and overtime wages because the Company failed to pay them for the time they spent working through their meal and/or rest periods. The Company improperly considered the work Claimant and other aggrieved employees performed during their meal and/or rest periods as non-compensable time and failed to provide any remuneration. As a result of being required to work off-the-clock during meal and/or rest periods, the Company did not pay Claimant and, on information and belief, other aggrieved employees minimum, regular, and overtime wages when Claimant and other aggrieved employees worked in excess of 8-hours a day and/or 40-hours a workweek.

Additionally, the Company failed to timely pay Claimant and other aggrieved employees all gratuities owed to them as mandated by Labor Code § 351. Claimant contends that the Company did not, and does not, have a valid tip pooling policy in place. For instance, Claimant is informed and believes, and thereon alleges, that the Company's management kept a portion of his and other aggrieved employees' tips. In addition, because the tips were pooled and then allocated to employees in an unfair and unreasonable manner at the end of each week, Claimant and, on information and belief, other aggrieved employees did not receive their gratuities the next regular pay, as required by California law. Furthermore, the Company did not maintain nor provide any record of the tips paid by customers. Claimant never received an itemized tip statement despite his requests for one. Consequently, the Company also failed to maintain accurate records of gratuities in violation of Labor Code § 353.

The Company also failed to reimburse Claimant and, on information and belief, other aggrieved employees for all necessary business expenses that were incurred in the discharge of their job duties. For instance, Claimant and other aggrieved employees were required to use their personal cell phones to download and access the "HomeBase" application. This application was used by Claimant and other aggrieved employees to check their work schedules, review paystubs, clock in and out, and communicate with management. Despite requiring the download and use of HomeBase, the Company did not have a policy and/or practice of reimbursing its employees. Claimant and, on information and belief, other aggrieved employees did not receive any reimbursement for the use of their personal cell phones as required by California law.

As a direct result of the Company's illegal policies and procedures, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other aggrieved employees' actual time worked, actual wages earned and paid, and gratuities received, in violation of California law.

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The wage statements issued by the Company also did not include the correct total regular and/or overtime hours worked, the correct amount of gross and/or net wages earned, and/or all applicable hourly rates and/or the corresponding number of hours worked at each hourly rate, among other things, as required under Labor Code § 226.

As a direct result of the aforementioned Labor Code violations, the Company failed to timely pay Claimant and, on information and belief, other aggrieved employees all wages due and payable upon separation of employment, including minimum, regular, and overtime wages for all overtime hours worked and meal and/or rest period premium wages, as required pursuant to Labor Code §§ 201, 202 and 204.

The Company also engaged in retaliation against Claimant. After Claimant made a good-faith complaint about not receiving legally compliant meal and/or rest periods, Claimant's manager removed him from the schedule and terminated his employment. The Company, therefore, took adverse employment action against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310.

Due to the foregoing Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Company on behalf of himself and all other current or former aggrieved employees of the Company in California.

Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims and/or theories discovered after the sending of this letter on behalf of himself and the current or former aggrieved employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL AND/OR REST PERIODS
OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7, and 512, and the "Meal Periods" and
"Rest Periods" sections of the Applicable Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code § 226.7(c) states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

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Labor Code § 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states,

“[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further states, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.” Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states,

“[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the Applicable Wage Order states,

“[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

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Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.

As set forth above, the Company failed to provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and did not authorize and permit Claimant and, on information and belief, other aggrieved employees to take legally compliant rest periods, as required by California law. Consequently, Claimant and other aggrieved employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided and/or one-hour of premium wages for each day a compliant rest period was not authorized and permitted. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

Labor Code § 1197.1 provides that,

"[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203..."

Labor Code § 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Labor Code § 1199 imposes "a fine of not less than one hundred dollars (\$100)" for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510 states,

"[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be

compensated at the rate of no less than twice the regular rate of pay of an employee.”

The “Hours and Days of Work” and “Minimum Wages” sections of the Applicable Wage Order mandates the same requirements as Labor Code § 510

Labor Code § 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code § 204(b)(1) states, “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.” Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.” The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1194(a) states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

As set forth above, the Company required Claimant and, on information and belief, other aggrieved employees to work off-the-clock during rest and/or meal periods without compensation. The Company thus failed to timely pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as required by law. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY GRATUITIES

(Labor Code §§ 351 and 354)

Labor Code § 351 states, in pertinent part,

“[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.”

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Labor Code § 351 also establishes that,

“[e]very gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.” Furthermore, “[p]ayment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”

Labor Code § 354 provides that “[a]ny employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not exceeding 60 days, or both.”

As set forth above, the Company failed to timely pay Claimant and, on information and belief, other aggrieved employees all gratuities, as required by law. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS OF GRATUITIES

(Labor Code §§ 353 and 354)

Labor Code § 353 mandates employers to “keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.” Labor Code § 354 provides that “[a]ny employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not exceeding 60 days, or both.”

As set forth above, the Company failed to maintain accurate records of all gratuities received. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receives interest on the applicable amount.

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Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and other aggrieved employees use their personal cell phones in the discharge of their duties without reimbursement. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174 states, “[e]very person employing labor in this state shall... [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, ..., employees employed at the respective plants or establishments.” See also Labor Code § 226(a).

The “Records” section of the Applicable Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

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

As set forth above, the Company violated these requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company’s failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages earned and paid. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 226.3, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code § 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, include the correct total regular and overtime hours worked, the correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current or former employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES OWED UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, 203, and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 states, in pertinent part, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code § 203(a) states, in pertinent part, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimant and other aggrieved employees all minimum, regular, and overtime wages and meal and/or rest period premium wages, within the required time upon separation of their employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties to Claimant and other aggrieved employees, which they have not yet paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other current or former aggrieved employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6, 1102.5 and 6310)

Labor Code § 98.6(a) mandates,

“[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

Labor Code § 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 1102.5(b) states,

“[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal

statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

In addition to other penalties, "an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation" of Labor Code § 1102.5(b).

Labor Code § 6310(a) provides, in pertinent part,

"[n]o person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative. (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her. . . ."

Labor Code § 6310(b) further states,

"[a]ny employee who is discharged . . . because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of . . . work practices, in his or her employment or place of employment . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor."

As set forth above, the Company engaged in retaliation against Claimant and wrongfully took adverse employment action against him in violation of Labor Code §§ 1102.5 and 6310.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 98.6(b)(3), 210, 225.5, 226.3, 558, 558.1, 1174.1, 1197.1 and 2699(f))

Labor Code § 98.6(b)(3) states an employer who violates Labor Code § 98.6 is liable for a civil penalty not exceeding \$10,000 per employee for each violation of this section. The civil penalty is to be awarded to the individuals who were improperly discharged.

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

Labor Code § 225.5 provides that, "...every person who unlawfully withholds wages due any employee in violation of Section...223 shall be subject to a civil penalty" of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code § 558.1(a) states that

"[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

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“(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 223, 222.5, 226(a), 226.3, 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198 and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and aggrieved employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor and the applicable sections of the relevant IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code §§ 98.6, 210, 225.5, 226.3, 558, 558.1, 1174.1, 1197.1 and 2699(f), Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other aggrieved current or former employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2698, *et seq.*, among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employees, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

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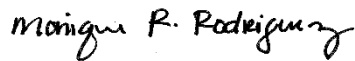
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CONCLUSION

Based on the foregoing, Claimant asserts that he is an “aggrieved employee” as the term is defined by Labor Code § 2699(c) as he is a former employee of the Company who has suffered one or more violations of the Labor Code. Claimant, on information and belief, also contends that all other current or former employees of the Company also constitute “aggrieved employees” under the statute. As presented herein, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other current or former aggrieved employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all current or former employees of the Company in California, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within sixty-five days of this letter, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other current or former employees of the Company in California as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink that reads "Monique R. Rodriguez". The signature is written in a cursive, flowing style.

Monique R. Rodriguez