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

9 **COUNTY OF LOS ANGELES**

10 CESAR ESCALANTE, in his representative
capacity, on behalf of himself and all other
11 aggrieved employees of Defendants in the state
of California,

12 Plaintiff,

13 v.

14 URTH PAYROLL SERVICES, INC., a
15 California corporation; URTH CAFFÉ
CORPORATION, a California corporation; and
16 DOES 1 THROUGH 50, Inclusive.,

17 Defendants.
18

Case No.:

20STCV25106

Unlimited Civil-

Amount Demanded Exceeds \$25,000.00

**REPRESENTATIVE ACTION FOR
PAGA CIVIL PENALTIES**

1. Violations of the Private Attorneys General
Act of 2004, Labor Code §§ 2698 *et. seq.*

19 Plaintiff Cesar Escalante ("Plaintiff") brings this action in his representative capacity against
20 Defendants Urth Payroll Services, Inc., Urth Caffé Corporation, and Does 1 through 50, inclusive,
21 (collectively "Defendants" or "Urth"), on the following grounds:

22 **I.**

23 **INTRODUCTION**

24 1. Plaintiff Cesar Escalante brings this representative action under the Private Attorneys
25 General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, "PAGA") on behalf of himself
26 and all other current or former individuals employed by Defendants in California during the time period
27 commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of this Complaint
28 through and including the date that trial concludes ("Urth Employees").

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUL 01 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Isaac Lovo, Deputy

2. Plaintiff asserts that during the relevant time period Urth engaged in a common pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders to decrease their employment related costs by, among other things:

- a. Misclassifying workers as exempt employees;
- b. Failing to provide legally compliant meal periods or compensation in lieu thereof;
- c. Failing to provide legally compliant rest periods or compensation in lieu thereof;
- d. Failing to timely pay all minimum and regular wages;
- e. Failing to timely pay all overtime and/or double time wages;
- f. Failing to timely pay all wages owed and due at the time of separation and/or the required waiting time penalties;
- g. Failing to furnish accurate itemized wage statements;
- h. Failing to provide written notice of sick leave;
- i. Failing to maintain accurate records;
- j. Failing to reimburse for necessary business expenses; and
- k. Engaging in retaliation against employees who exercise their legal rights.

3. By and through this representative action, Plaintiff seeks to recover all available remedies including but not limited to civil penalties, attorneys’ fees, and litigation costs on behalf of himself and all other Urth Employees, the general public and the state of California.

4. All allegations in this Complaint are based upon information and belief, except those allegations specifically pertaining to Plaintiff and/or his counsel of record, which are based upon personal knowledge. Each of the allegations in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and formal discovery.

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II.

PARTIES

A. PLAINTIFF

5. Plaintiff Cesar Escalante at all material times mentioned herein:

- a. Was a resident of the County of Los Angeles;
- b. Was employed by Defendants from approximately June 15, 2019 to August 27, 2019 as a General Manager at Defendants' cafés located in Los Angeles and Beverly Hills, California;
- c. Engaged in work for Defendants in the County of Los Angeles, California;
- d. Was paid an annual salary on a bi-weekly basis and was eligible for quarterly non-discretionary bonuses;
- e. Was classified by Defendants as an exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- f. Performed non-exempt work duties more than fifty percent (50%) of the time he spent working for Defendants, including, but not limited to, bussing tables, running food to customers, and helping in the kitchen, and thus should have been classified as a non-exempt employee;
- g. Was subject to Defendants' control, including but not limited to, the manner and means by which he was to, and actually did, perform work for Defendants;
- h. Regularly worked more than eight (8) hours per shift and/or forty (40) hours per week;
- i. Was not timely compensated at the appropriate minimum, regular, overtime and/or double time wages for all time worked, including, but not limited to, time spent working through meal periods and time spent working in excess of eight (8) hours a day and/or forty (40) hours a workweek;
- j. Was not provided with legally compliant meal periods and/or compensation in lieu thereof;
- k. Was not provided with legally compliant rest periods and/or compensation in lieu

thereof;

- l. Was not timely paid all wages due and payable during employment;
- m. Was not timely paid all wages due and payable upon termination of the employment relationship;
- n. Was not paid waiting time penalties as provided for under California law;
- o. Was not furnished with accurate itemized wage statements;
- p. Was not provided with written notice of sick leave;
- q. Contends his employee records were not accurately maintained by Defendants;
- r. Was not reimbursed for all necessary business expenses;
- s. Was retaliated against by Defendants after making a good-faith complaint about unsafe working conditions as a result of fire and safety hazards in the kitchen;
- t. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- u. Complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

B. DEFENDANTS

6. Defendant Urth Payroll Services, Inc. (“Urth Payroll”) is a California corporation authorized to do business in the state of California and has its principal place of business in Los Angeles, California. Urth Payroll is in the food and beverage industry and is believed to own, operate, and/or manage Urth Caffé, a café chain located in Los Angeles County, California that specializes in organic coffee and health conscious cuisine.

7. Defendant Urth Caffé Corporation (“Urth Caffé Corp.”) is a California corporation authorized to do business in the state of California and has its principal place of business in Los Angeles, California. Urth Caffé Corp is believed to own, operate and/or manage Urth Payroll.

8. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of Defendants Does 1 through 50, inclusive, are presently unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have

1 participated in the acts and/or omissions alleged in this Complaint.

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

6 10. At all times mentioned herein, each named Defendant, including each fictitiously named
7 defendants, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other
8 defendants, and in doing the things alleged herein acted within the course and scope of such agency,
9 employment, alter-ego and/or in furtherance of the joint venture.

10 11. At all times mentioned herein, the acts and/or omissions of each of the named Defendants,
11 including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions
12 of each and every one of the other defendants in proximately causing the wrongful conduct, harm and/or
13 damages alleged herein. Each of the named Defendants, including each fictitiously named defendants,
14 approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions
15 complained herein. Each of the named Defendants, including each fictitiously named defendants, were
16 and are acting with the authority of each and every other defendant and/or are acting as agents of each and
17 every other defendant.

18 12. At all times mentioned herein there was a unity of interest and ownership between each
19 named Defendant, including each fictitiously named defendants, such that all Defendants acted as a single
20 employer of Plaintiff and all other Urth Employees.

21 13. At all times mentioned herein each named Defendant, including each fictitiously named
22 defendants, exercised supervision and control over the working conditions of Plaintiff and all other Urth
23 Employees, including, but not limited to, implementing standard policies and procedures.

24 **III.**

25 **JURISDICTION AND VENUE**

26 14. This Court has jurisdiction over this action pursuant to Code of Civil Procedure § 410.10
27 and Labor Code §§ 2698 *et seq.* Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff brings this action in his
28 representative capacity on behalf of himself and on behalf of all Urth Employees, as defined herein.

22. Plaintiff contends that all Urth Employees were subject to the same and/or similar policies, practices, procedures and/or guidelines described herein.

23. Plaintiff further alleges that he and other Urth Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

24. Plaintiff alleges that he and all other Urth Employees who were classified as exempt (“Exempt Employees”) were misclassified because they were expected to and regularly performed non-managerial tasks more than fifty percent (50%) of the time. For example, Plaintiff asserts that due, in part, to Defendants’ severe understaffing of their cafés, he and other Exempt Employees were expected and required to primarily perform non-managerial tasks such as bussing tables, running food to customers, and helping in the kitchen. Consequently, Plaintiff and other Exempt Employees were engaged in non-exempt duties during more than fifty percent (50%) of the time they spent performing work for Defendants. It necessarily follows that Plaintiff and other Exempt Employees spent less than fifty percent (50%) of their working time engaged in exempt duties such as monitoring day to day operations of the café, creating employee schedules, ensuring sales targets were met, and completing daily inventories. Accordingly, at all times, Plaintiff and all other Exempt Employees should have been classified as non-exempt employees and should have received the rights and protections afforded by the Labor Code and the applicable IWC Wage Order.

25. Plaintiff contends that Defendants engaged, and continue to engage, in a common policy, practice, guideline, procedure and/or culture of misclassifying and/or mistreating Exempt Employees as exempt employees in violation of Labor Code § 226.8 and that Defendants unfairly benefited from such misclassification by decreasing their employment related costs and increasing their profits.

26. Plaintiff is informed and believes that Defendants knew or should have known that Exempt Employees were, and are, appropriately classified as non-exempt employees because Defendants required them to spend, and they did in fact spend, fifty percent (50%) of their working time engaged in non-exempt duties, including, but not limited to, bussing tables, taking orders, running food to customers, and operating cash registers, and are therefore entitled to the rights and protections afforded by the Labor Code and applicable IWC Wage Orders, including, but not limited to, overtime wages, meal periods and/or rest periods.

1 27. Plaintiff contends that Defendants did not, and do not, have a policy, practice, guideline,
2 procedure and/or culture of providing Urth Employees with an opportunity to take a thirty (30) minute
3 off-duty meal period when they worked five (5) or more hours, nor do Defendants have a policy, practice,
4 guideline, procedure and/or culture of providing a second off-duty meal period to Urth Employees when
5 they worked more than ten (10) hours.

6 28. Due to Defendants' severe understaffing of their cafes and failure to provide coverage for
7 their employees, Urth Employees were consistently interrupted during their meal periods, required to take
8 untimely and/or short meal periods, required to work through their meal periods despite being clocked
9 out, and/or not provided with meal periods at all. For example, Urth Employees, including, but not limited
10 to, cooks and shift supervisors, were required to take on-duty meal periods and respond to customer needs
11 because, as a result of Defendants' chronic understaffing, there were no employees available to relieve
12 them of their work duties. Furthermore, when Urth Employees attempted to take their meal periods, they
13 were often interrupted by work tasks and required to return to work before the thirty (30) minute meal
14 period had ended. Upon returning to work early from their meal periods, Urth Employees were instructed
15 by Defendants to wait before clocking back in to ensure that their meal periods were at least thirty (30)
16 minutes long, when in fact, the meal periods were shorter than thirty (30) minutes and not completely free
17 from work duties and/or Defendants' control. Thus, Defendants failed to provide Urth Employees with
18 meal periods in compliance with Labor Code §§ 204, 226.7, 512, 558 and 1198 and the "Meal Periods"
19 section of the applicable IWC Wage Order.

20 29. Plaintiff further attests that he and other Exempt Employees were not provided with the
21 opportunity take thirty (30) minute off-duty meal periods when they worked more than five (5) hours in a
22 workday and/or a second thirty (30) minute off duty meal period when they worked more than ten (10)
23 hours in a workday due to Defendants' willful misclassification of Exempt Employees as exempt.

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

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1 31. Plaintiff and other Urth Employees regularly worked shifts at least three and a half hours
2 long; however, due to Defendants' failure to adequately staff their cafes and appropriately manage
3 employee scheduling, Defendants failed to authorize or permit Urth Employees to take off-duty ten (10)
4 minute rest periods for every four (4) hours worked or major fraction thereof. Instead, Urth Employees
5 were consistently required to work during their rest periods, to take untimely rest periods, and/or not
6 provided with rest periods at all. For instance, Urth Employees regularly did not receive rest periods that
7 were free from all duty because Defendants' café was extremely busy and there wasn't adequate staff
8 available to relieve employees for their rest periods. As a result, Urth Employees were required to provide
9 customer service, prepare food in the kitchen, and perform other work tasks during their rest periods.
10 Defendants therefore failed to provide Urth Employees with legally compliant rest periods in violation of
11 Labor Code §§ 204, 226.7 and 1198 and the applicable IWC Wage Order.

12 32. Plaintiff alleges that he and other Exempt Employees were not, and are not, authorized or
13 permitted to take ten (10) minute off-duty rest periods because, as a result of Defendants' willful
14 misclassification of Exempt Employees as exempt, Defendants evaded their obligation to provide
15 compliant rest periods to Exempt Employees.

16 33. Plaintiff asserts that he and other Urth Employees were not, and are not, timely compensated
17 a premium wage equivalent to one (1) hour of pay at their regular rate of pay for all the times that
18 Defendants failed to provide them with compliant meal and/or rest periods, as provided under California
19 law.

20 34. Plaintiff alleges that Defendants had, and continues to have, a common policy, practice,
21 guideline, procedure, and/or culture of paying all Exempt Employees on a salary basis, which caused him
22 and/or other Exempt Employees to be compensated at rates less than those designated by statute and/or
23 contract.

24 35. As a policy, practice, guideline, procedure and/or culture, Defendants regularly required
25 Plaintiff and other Exempt Employees to work more than eight (8) hours per day and/or forty (40) hours
26 per week. In fact, Plaintiff routinely worked ten (10) to fifteen (15) hour days. However, as a direct result
27 of Defendants' scheme of purposefully misclassifying Exempt Employees as exempt, Plaintiff and other
28 Exempt Employees were paid a salary and thus not timely paid all minimum, regular, overtime and/or

double time wages for all hours permitted and suffered to work. As described above, Plaintiff and other Exempt Employees also were not timely paid premium wages for non-compliant meal and/or rest periods.

36. Plaintiff further contends that Defendants did not have, and do not have, a policy, practice, guideline, procedure and/or culture of timely compensating Urth Employees for all time engaged in various work activities at the direction of Defendants, including, but not limited to, time spent working through meal periods and/or time spent performing work duties while off-the-clock. For instance, Urth Employees regularly assisted customers, prepared food, and performed other work tasks during their meal periods, but Defendants improperly considered this work as non-compensable time and failed to provide any remuneration. In addition, Defendants also encouraged or otherwise compelled Urth Employees to continue working twenty (20) to thirty (30) minutes after they had clocked out to finish preparing food and to clean-up their work areas, approximately two (2) times per week. Urth Employees were also not compensated for time spent answering work-related phone calls and text messages outside of their scheduled work hours. Consequently, Defendants failed to timely pay Urth Employees all minimum, regular, and overtime wages owed, as required by Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of the applicable IWC Wage Order.

37. Plaintiff also asserts that Defendants violated Labor Code §§ 201-204 by and through their policy, practice, guideline, procedure and/or culture of willfully failing to timely pay all wages due and owed to Plaintiff and other Urth Employees who separated from their employment with Defendants during the relevant statutory period for all time worked, including without limitation, for time spent working while off-the-clock, premium wages, and overtime wages. Plaintiff further alleges that, as a result of Defendants’ failure to comply with the Labor Code provisions described herein, Defendants failed to pay the appropriate waiting time penalties to him and other former Urth Employees as provided under California law.

38. Due to Defendants’ policies, practices, guidelines, procedures and/or culture described herein, Defendants intentionally and knowingly failed to furnish Plaintiff and other Urth Employees with accurate itemized wage statements as required by Labor Code § 226 and the “Records” section of the applicable IWC Wage Order. Plaintiff asserts that the wage statements furnished by Defendants to him

1 and other Urth Employees did not properly reflect the number of hours worked and/or the various rates of
2 pay, including overtime, and the gross and net wages earned. Defendants also failed to include the
3 applicable rate of pay and the total hours of compensable time worked, including, but not limited to, time
4 spent working during meal periods and time spent cleaning and preparing food while off-the-clock.
5 Plaintiff further alleges that Defendants failed to furnish wage statements that properly reflect the amount
6 of accrued vacation and paid sick leave. The wage statements also did not include the required pay period
7 information and the employee and employer identification information.

8 39. Plaintiff further alleges that, as a result of willfully misclassifying him and other Exempt
9 Employees as exempt, Defendants failed to furnish Exempt Employees with accurate itemized wage
10 statements in compliance with California law because the wage statements furnished did not properly
11 reflect the number of hours actually worked and/or the various rates of pay, including overtime, and the
12 gross and net wages earned, the amount of accrued vacation and earned sick leave, the required pay period
13 information, and the required employee and employer information.

14 40. Because of Defendants' policies, practices, guidelines, procedures and/or culture described
15 herein, including, but not limited to, the failure to record the proper beginning and end of each work
16 period, the meal periods, the applicable rates of pay, and the total hours of compensable time worked,
17 such as time spent working during meal periods, Plaintiff asserts that Defendants knowingly and
18 intentionally failed to maintain accurate employee and/or payroll records as required by Labor Code §§
19 226 and 1174 and the "Records" section of the applicable IWC Wage Order.

20 41. As a policy, practice, guideline, procedure and/or culture, Plaintiff asserts that Defendants
21 failed to reimburse Urth Employees for all necessary expenses that were incurred in the discharge of their
22 job duties, in violation of Labor Code § 2802. For example, Defendants required Plaintiff and other Urth
23 Employees to use their personal cell phones to communicate with management and co-workers regarding
24 work assignments and scheduling issues. This is evidenced by Defendants' requirement that Urth
25 Employees download an application onto their personal cell phones for work communication purposes.
26 Despite the requirement for Urth Employees to use their personal cell phones for work purposes, Plaintiff
27 and other Urth Employees did not receive any reimbursement for the use of their personal cell phones in
28 connection with the work performed for Defendants. Furthermore, Defendants required Urth Employees

1 to use their personal vehicles for work-related tasks, but failed to provide any reimbursement for mileage
2 and other transportation expenses. For example, Plaintiff and other Urth Employees were required to use
3 their personal vehicles to obtain supplies from local stores and visit Defendants' headquarters, without
4 receiving any reimbursement or compensation from Defendants.

5 42. Plaintiff contends that Defendants have a policy, practice, guideline, procedure and/or
6 culture of retaliating against Urth Employees who make good faith complaints about unlawful and/or
7 unsafe conductions in the workplace in violation of Labor Code §§ 98.6, 1102.5 and 6310. For instance,
8 Plaintiff was terminated from his employment after making a good-faith complaint about unsafe working
9 conditions in the café and refusing to reorganize the café kitchen as directed by the Regional Area Manager
10 in a manner that created a fire and safety hazard.

11 43. On March 9, 2020, Plaintiff submitted written notice to the California Labor and Workforce
12 Development Agency ("LWDA") and Defendants informing them of Urth's alleged violations of the
13 Labor Code under the PAGA, including the facts and theories to support each violation. A true and correct
14 copy of the March 9, 2020, written notice is attached hereto as **Exhibit 1** and is incorporated herein by
15 reference.

16 44. On April 24, 2020, Plaintiff submitted an amended written notice to the LWDA and
17 Defendants informing them of Urth's alleged violations of the Labor Code under the PAGA, including
18 the facts and theories to support each violation. A true and correct copy of the April 24, 2020, written
19 notice is attached hereto as **Exhibit 2** and is incorporated herein by reference.

20 45. To date, the LWDA has not provided notice of whether it intends to investigate the alleged
21 violations of the Labor Code. Pursuant to the PAGA, Plaintiff has the right to pursue, and does so pursue,
22 the asserted claims in a representative action in his representative capacity on behalf of himself, all other
23 Urth Employees, the general public and the state of California as permitted by Labor Code § 2699.3.

24 46. Plaintiff further believes that additional violations may be discovered and therefore reserves
25 his right to allege additional violations of the law as investigation and discovery warrants. In the event
26 Plaintiff discovers additional violations through the discovery process, Plaintiff will seek to amend the
27 operative complaint as necessary.

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V.

PAGA CLASS

47. By and through this representative action, Plaintiff intends to represent the following class and/or subclasses of individuals: All current or former individuals employed by Defendants in California during the time period commencing on the date that is one (1) year and sixty-five (65) days prior to the filing of this Complaint through and including the conclusion of trial ("PAGA Period").

a. All current or former individuals employed by Defendants in California who were classified as exempt during the PAGA Period.

b. All current or former individuals employed by Defendants in California who were classified as non-exempt during the PAGA Period.

To the extent that equitable tolling operates to toll the claims asserted against Defendants, the PAGA Period should be adjusted accordingly.

48. More precise definitions of the class and/or subclasses may be determined after further investigation and formal discovery. Plaintiff reserves his right to redefine the class and/or subclass in accordance with California law.

VI.

CAUSES OF ACTIONS

FIRST CAUSE OF ACTION

(By Plaintiff in his Representative Capacity against Defendants and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq.*]

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

53. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in

1 addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent
2 (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to § 2699(i).

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

10 55. Plaintiff is an "aggrieved employee" under the PAGA, because he was employed by the
11 alleged violator, Urth, and had one or more of the alleged violations committed against him, and therefore
12 is properly suited to represent the interests of other Urth Employees.

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

16 57. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies
17 because he complied with the notice requirements outlined in Labor Code § 2699.3. On March 9, 2020,
18 Plaintiff submitted notice to the LWDA and Defendants informing them of Defendants' alleged Labor
19 Code violations pursuant to PAGA. (See Exh. 1.) On April 24, 2020, Plaintiff submitted an amended
20 notice to the LWDA and Defendants. (See Exh. 2.) The LWDA had 65 days to provide notice of whether
21 it intended to investigate the alleged violations. To date, the LWDA has not provided notice of whether
22 it intends to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, his
23 claims under PAGA in a representative capacity pursuant to Labor Code § 2699.

24 58. As set forth herein, Defendants have committed, and continue to commit, numerous
25 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his
26 representative capacity, to recover, on behalf of himself and all other Urth Employees, as well as the
27 general public, civil penalties as well as attorneys' fees and costs from Defendants for the alleged
28 violations, described herein.

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

- a. Willful misclassification of Exempt Employees as exempt employees in violation of Labor Code §§ 226.8(a) and 226.8(c);
- b. Failure to provide legally compliant meal periods or compensation in lieu thereof in violation of Labor Code §§ 204, 226.7, 512, 558 and 1198 and applicable IWC Wage Orders;
- c. Failure to provide legally compliant rest periods or compensation in lieu thereof in violation of Labor Code §§ 204, 226.7 and 1198 and applicable IWC Wage Orders;
- d. Failure to timely pay minimum, regular, overtime and/or double time wages in violation of Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.1, 1197, 1197.1, and 1198 and applicable IWC Wage Orders;
- e. Failure to timely pay wages due and owed upon separation of employment and the required waiting time penalties violation of Labor Code §§ 201 – 204;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3 and applicable IWC Wage Orders;
- g. Failure to provide written notice of sick leave in violation of Labor Code § 246(i);
- h. Failure to maintain accurate records in violation of Labor Code §§ 226(a), 1174, 1174.5 and applicable IWC Wage Orders;
- i. Failure to reimburse for necessary work expenses in violation of Labor Code § 2802 and applicable IWC Wage Orders; and
- j. Engagement in retaliation against employees who exercised their rights to complain about unlawful and unsafe working conditions in violation of Labor Code §§ 98.6, 1102.5, and 6310.

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60. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 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% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other Urth Employees are entitled to and do seek such civil penalty.

61. Labor Code § 225.5 imposes a civil penalty of \$100 for each failure to pay each employee, and \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld for each subsequent violation, or any willful or intentional violation of Labor Code §§ 221 and 223. Therefore, Plaintiff and all other Urth Employees are entitled to and do seek such civil penalty.

62. 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 for violations of Labor Code § 226(a). Plaintiff and all other Urth Employees are thus entitled to and seek the described civil penalty.

63. Labor Code § 226.8(b) imposes a civil penalty of not less than \$5,000 and not more than \$15,000 for each violation of Labor Code § 226.8(a). Additionally, when an employer has engaged in or is engaging in a pattern or practice of violation Labor Code § 226.8(a), pursuant to Labor Code § 226.8(c), a civil penalty of not less than \$10,000 and not more than \$25,000 is imposed for each violation. Plaintiff and all other Urth Employees are therefore entitled to and do seek such civil penalties.

64. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 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 all other Urth Employees are entitled to and do seek the described civil penalty.

65. Labor Code § 1197.1 imposes upon Defendants, for each initial violation of wage and hour laws, a penalty of \$100.00 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 and liquidated damages pursuant to Labor Code § 1194.2, which states: “[i]n any action under Section 98,

1 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
2 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated
3 damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Plaintiff and all other
4 Urth Employees are entitled to and do seek such civil penalty.

5 66. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the
6 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code
7 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code
8 §§ 98.6, 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198,
9 2802, and 6310. Plaintiff and other Urth Employees are entitled to, and therefore seek, the above described
10 civil penalty.

11 67. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought
12 pursuant to PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff,
13 in his representative capacity on behalf of himself and all other Urth Employees, is entitled to, and
14 therefore seeks, attorneys’ fees and costs.

15 68. Plaintiff, in his representative capacity on behalf of himself and all other Urth Employees,
16 is entitled to and seeks recovery of reasonable attorneys’ fees as provided by Labor Code § 218.5 and
17 Code of Civil Procedure § 1021.5.

18 69. Plaintiff, in his representative capacity on behalf of himself and all other Urth Employees,
19 requests further relief as described in the below prayer for relief.

20 **PRAYER FOR RELIEF**

21 Plaintiff, in his representative capacity on behalf of himself and all other Urth Employees, prays
22 for judgment against Defendants and in favor of a Representative Action, as follows:

- 23 a. For any and all civil penalties available for the Labor Code violations alleged
24 herein, including but not limited to civil penalties under Labor Code §§ 210, 226.3,
25 558, 1174.5, 1197.1 and 2698 *et seq.*, and/or other applicable law;
26 b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100
27 for each aggrieved employee per pay period for the initial violation and \$200 for
28 each aggrieved employee per pay period for each subsequent violation as provided

in Labor Code § 2699(f);

- c. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including under Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 226, 1194, 2699, and 2802, the "common fund" theory, the "substantial benefit" theory and/or other applicable law;
- d. For appropriate equitable relief pursuant to California law; and
- e. For any and all other relief as this Court deems proper and just.

Dated: June 18, 2020

GRAHAMHOLLIS APC

By: Monique R. Rodriguez
Graham P. Hollis
Vilmarie Cordero
Monique R. Rodriguez
Attorneys for Plaintiff Cesar Escalante

EXHIBIT 1

March 9, 2020

Attorneys at Law

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San Diego, California 92103
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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)

Urth Payroll Services, Inc.
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Payroll Services, Inc.
c/o Shallom Berkman, Agent for Service of
Process
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
c/o Shallom Berkman, Agent for Service of
Process
451 S. Hewitt Street
Los Angeles, CA 90013

Graham S.P. Hollis
Vilmarie Cordero
Nathan Reese
Hali Anderson
David Lin
Erick Dos Santos
Alex Kuner
Monique Rodriguez

Re: **Cesar Escalante's Wage and Hour Claims Against Urth Payroll Services, Inc. and Urth Caffé Corporation**

Dear Labor and Workforce Development Agency, Urth Payroll Services, Inc., and Urth Caffé Corporation:

Please be advised that Cesar Escalante ("Claimant") has retained our firm to represent him for claims against his former employers Urth Payroll Services, Inc. and Urth Caffé (together, "the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor

Code violations Claimant claims that the Company committed against him and all other current and former employees of the Company in California. Claimant provides this notice in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek civil penalties, attorneys’ fees, and costs, accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and 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 (collectively the “aggrieved employees”).

FACTUAL BACKGROUND

Urth Payroll Services, Inc. owns and operates Urth Caffé, a café chain that specializes in offering heirloom organic coffee and health conscious cuisine. Urth Caffé Corporation is believed to own and manage Urth Payroll Services, Inc. The Company is headquartered and has its principal place of business in Los Angeles, California.

The Company employed Claimant as a General Manager from approximately June 2019 to August 2019. Claimant typically worked five days a week from approximately 5:00 a.m. to 5:00 p.m. or 12:00 p.m. to 12:00 a.m. At all relevant times, the Company classified Claimant as an exempt employee and paid him a salary of \$70,000 per year. In addition, Claimant was eligible for quarterly non-discretionary bonuses. For reasons set forth below, Claimant contends that the Company purposefully misclassified him and other aggrieved employees as “exempt” employees when in fact Claimant and other aggrieved employees should have been classified as “non-exempt” employees.

As a General Manager, Claimant’s job duties with the Company should have primarily consisted of managerial related tasks. However, due to the Company’s severe understaffing of managers and hourly employees, Claimant was required and expected to perform primarily non-managerial tasks, such as bussing tables, running food to customers, operating the cash registers, and helping in the kitchen, more than 51% of the time he worked. For these reasons, Claimant alleges that the Company misclassified him and, on information and belief, other aggrieved employees as “exempt” employees when in fact Claimant and other aggrieved employees should have been classified as “non-exempt” employees. Accordingly, at all times, Claimant was a “non-exempt” employee and should have received the protections afforded by the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

The Company denied Claimant and other aggrieved employees in California specific rights afforded to them under the Labor Code and the applicable IWC Wage Order. Specifically, the Company failed to provide them 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 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 during and upon separation of employment.

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 rest periods. For example, due to the Company's severe understaffing, lack of coverage, and policy to go above and beyond in servicing customers, Claimant and, on information and belief, 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. On information and belief, non-exempt employees, such as cooks and shift supervisors, were required to take on duty meal and/or rest periods due to the Company's chronic understaffing. In addition, due to the Company's misclassification of Claimant and other aggrieved employees as "exempt" employees, the Company did not provide them with meal and/or rest periods. Furthermore, Claimant and, on information and belief, other aggrieved employees were not provided with a second meal period and/or a third rest period when they worked shifts longer than 10 hours. As a result, Claimant and other aggrieved employees were regularly required to work 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, on information and belief, 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 periods. The Company improperly considered the work Claimant and other aggrieved employees performed during their meal periods as non-compensable time and failed to provide any remuneration. On information and belief, other non-exempt employees were also required to clock out and continue working to finish up preparing food or cleaning up their work areas. Additionally, as a direct result of the Company's scheme of purposefully misclassifying Claimant and other aggrieved employees as "exempt" employees, Claimant and other aggrieved employees were not paid all minimum, regular, and overtime wages when they routinely worked in excess of eight hours per day and/or 40 hours per workweek. As a result of being required to work off-the-clock during meal periods and/or of being misclassified as "exempt" employees, 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 eight hours a day and/or forty hours a workweek.

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 example, Claimant and other aggrieved employees were required to use their personal cell phones to communicate with upper management and other co-workers. In addition, the Company also required Claimant and, on information and belief, other aggrieved employees to use their personal vehicles to pick up supplies for the café at local stores. Claimant and, on information and belief, other aggrieved employees did not receive any reimbursement for the use of their personal cell phones or vehicles, 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 and actual wages earned and paid in violation of California law.

In addition, the wage statements issued by the Company did not 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, 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 during and 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.

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 and 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 COMPLIANT MEAL PERIODS
AND AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code §§ 204, 226.7, 512, 558, 1198 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."

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.”

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.”

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 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 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..." Section 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 § 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.

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 § 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.

Labor Code § 223 states, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” 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.

As set forth above, the Company 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR 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.

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 and vehicles 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 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.”

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).

As set forth above, the Company violated these requirements by failing to accurately record employee hours 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 1198, 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 and former employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 210, 1194, 1194.2, 1198 and the "Minimum Wages" section of the Applicable IWC Wage Order)

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 § 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, 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."

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.

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.”

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimant and other aggrieved employees all minimum and overtime wages and meal and/or rest break premium wages, within the required time during and 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 and former aggrieved employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.1, 1197.1 and 2699(f))

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 in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

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.” This includes the owners, officers, directors, or managing agents of the employer. Labor Code § 558.1(b).

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: “(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 §§ 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 underpaid Claimant and aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to timely pay them all regular, minimum, and overtime wages, and meal and rest break 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 §§ 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 and 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 unpaid balance of the full amount of overtime compensation, reimbursements, 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

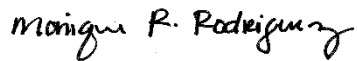
costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

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 and 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 and 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 and 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 and former employees of the Company in California as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez

EXHIBIT 2

April 24, 2020

Attorneys at Law

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619.692.0800 voice
619.692.0822 fax

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Monique R. Rodriguez
mrodriguez@grahamhollis.com
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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)

Urth Payroll Services, Inc.
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Payroll Services, Inc.
c/o Shalom Berkman, Agent for Service of
Process
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
c/o Shalom Berkman, Agent for Service of
Process
451 S. Hewitt Street
Los Angeles, CA 90013

Re: **Amendment to Cesar Escalante's Wage and Hour Claims Against Urth
Payroll Services, Inc. and Urth Caffé Corporation
LWDA Case No.: LWDA-CM-777287-20**

Dear California Labor and Workforce Development Agency, Urth Payroll Services, Inc.,
and Urth Caffé Corporation:

This letter shall serve as Cesar Escalante's ("Claimant's") amended written notice to the California Labor and Workforce Development Agency ("LWDA") and his former employers Urth Payroll Services, Inc. and Urth Caffé (together, "the Company") of the following amendments to Claimant's initial written notice: Claimant's intent to represent two classes of aggrieved employees; the addition of a claim for misclassification of exempt employees; and the addition of Claimant's retaliation claim. Claimant provides this amended notice in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code §

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and to seek civil penalties, attorneys' fees, and costs, accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent two classes of 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 (collectively the "aggrieved employees"). Claimant seeks to represent all current or former employees of the Company in California who were classified as non-exempt (the "Non-Exempt Class"). Claimant also intends to represent all current or former employees of the Company in California who were classified as exempt (the "Exempt Class").

The original written notice is attached hereto as **Exhibit A** ("Original Notice") and incorporated herein by reference. The claims in the Original Notice are asserted on behalf of Claimant, the Non-Exempt Class, and the Exempt Class. The Original Notice was sent to Claimant's former employers, Urth Payroll Services, Inc. and Urth Caffé, via certified mail on March 9, 2020. The Original Notice was filed online with the LWDA on March 9, 2020. Since the date of the Original Notice, Claimant has become aware of new information and amends the Original Notice, incorporated herein by reference, to add the following:

ADDITIONAL FACTS AND THEORIES

The Company had a pattern and practice of willfully misclassifying Claimant and, on information and belief, other members of the Exempt Class as exempt employees for its own benefit. As a General Manager, Claimant's job duties with the Company should have primarily consisted of managerial related tasks. However, due to the Company's severe understaffing of its cafés, Claimant and other members of the Exempt Class were required and expected to perform primarily non-managerial tasks, such as bussing tables, running food to customers, operating the cash registers, and helping in the kitchen. Consequently, Claimant and, on information and belief, other members of the Exempt Class, performed non-exempt duties more than 50% of the time they spent working for the Company. It necessarily follows that Claimant and other members of the Exempt Class spent less than 50% of their working time engaged in exempt duties. Accordingly, at all times, Claimant and members of the Exempt Class should have been classified as non-exempt employees and should have received the rights and protections afforded by the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order.

As a direct result of the Company's scheme of purposefully misclassifying Claimant and other members of the Exempt Class as exempt employees, the Exempt Class did not receive proper protections and benefits of the laws governing the compensation for minimum wages, regular wages, and overtime wages. The Company improperly paid Claimant and other members of the Exempt Class a salary and failed to timely pay them for hours worked more than eight hours per day and/or more than forty hours per week. Thus, Claimant and other aggrieved employees were not timely compensated minimum, regular, and overtime wages owed and earned because they were not timely compensated for all hours permitted and suffered to work.

Furthermore, as a result of willfully misclassifying Claimant and other members of the Exempt Class, the Company did not provide the Exempt Class with meal and/or rest periods, accurate itemized wage

statements in compliance with California law, reimbursement for necessary business expenditures, and/or all wages owed upon separation of their employment. The Company also failed to maintain accurate records for Claimant and members of the Exempt Class.

The Company also engaged in unlawful retaliation against Claimant. Claimant made a good-faith complaint about unsafe working conditions as a result of a fire and safety hazard in the kitchen. Specifically, Claimant was instructed by the Director of Maintenance and Facilities to reorganize the kitchen, who was concerned that the organization of appliances, furniture, and other components of the kitchen created a fire and safety hazard. Claimant reorganized the kitchen as instructed by the Director of Maintenance and Facilities. Claimant's Regional Manager then directed Claimant put the appliances, furniture and other components the kitchen in their original position. Claimant voiced his concerns to the Regional Manager that the placement of the items in the kitchen posed a potential fire and safety hazard to him and other employees, and orally disclosed that he was concerned that if he put the kitchen back to how it was initially, the café would be closed by the fire marshal. Claimant provided the Regional Manager with an email from the Director of Maintenance and Facilities demonstrating the fire and safety hazard with the original setup of the kitchen. Instead of addressing Claimant's concerns for the safety and wellbeing of Claimant, other employees, and customers, the Regional Manager terminated Claimant's employment for Claimant's refusal to put the kitchen appliances, furniture and other components in the position preferred by the Regional Manager. The Company, therefore, took adverse employment action against Claimant in violation of Labor Code §§ 98.6, 1102.5 and 6310.

WILLFUL MISCLASSIFICATION OF INDIVIDUALS AS EXEMPT EMPLOYEES

(Labor Code §§ 226.8(a) and 226.8(c))

Section 1 of the applicable IWC Wage Order provides the requirements necessary in determining whether an employee's duties qualify for an exemption from the protections afforded in Sections 3 through 12 of the Order. According to the IWC Wage Order, an exempt employee means any employee "[w]ho is primarily engaged in duties which meet the test of the exemption." Section 2 of the IWC Order defines "primarily" to mean more than one-half the employee's work time.

The IWC Order further provides,

"[e]xempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement."

Accordingly, to determine whether employees are properly classified as exempt employees, courts evaluate the realistic requirements of a job, as opposed to the job description. See *Ramirez v. Yosemite*

Water Co. (1999) 20 Cal.4th 785, 802. Substantial consideration is afforded to how an employee actually spends his time working. *Id.* Only where an employee spends more than 50% of his time working on exempt duties is he appropriately deemed an exempt employee. See e.g. *Ramirez v. ISB Mehta Corp.* (2017) Calif. Ct. App., No. H042072 (holding that a restaurant manager who spent less than 50 percent of his workweek on non-exempt tasks is an exempt employee under California law).

Labor Code § 226.8(a) makes it unlawful for an employer to willfully misclassify an individual as an exempt employee. Where an employer has engaged in, or is engaging in, a pattern or practice of willfully misclassifying individuals as exempt employees, Labor Code § 226.8(c) requires the employer to pay a civil penalty of no less than ten thousand dollars, and up to and including twenty-five thousand dollars, in addition to any other legally permitted penalties.

As set forth above, the Company violated the Labor Code by willfully misclassifying Claimant and other members of the Exempt Class as exempt employees. Claimant and, on information and belief, other members of the Exempt Class spent more than 50% of their work time on non-exempt duties and thus were non-exempt employees within the definition of the IWC Wage Order. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other members of the Exempt Class 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 for exercising his rights under the Labor Code and complaining about unsafe working conditions, in violation of Labor Code §§ 98.6, 1102.5, and 6310. Claimant will pursue all available remedies for the Company’s violations on behalf of himself to the extent allowed by law.

CONCLUSION

The facts, claims and legal theories contained herein are based on the information available at the time of this writing. If, through investigation, discovery and/or expert review, Claimant becomes aware of additional claims, facts, theories, additional compensation owed, and/or other violations to him or any other current or former employee of the Company in the California, he reserves the right to include and/or revise any and all related, facts, claims and/or theories on behalf of himself and the current or former employees of the Company in California against the Company and/or any other persons that may be discovered after the sending of this letter and/or the Original Notice by amending this letter or by including applicable causes of action in a civil action. 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.

Based on the claims, facts and theories in this letter and the Original Notice, the Company has violated the Labor Code and relevant IWC Wage Order and thereby deprived Claimant and other current or former employees of the Company in California of the rights and protections afforded to them. Claimant has satisfied the prerequisites to serve as a representative of all current or former employees of the Company in California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein and in the Original Notice, as well as those which may be later discovered.

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Labor Workforce Development Agency,
Urth Payroll Services, Inc.,
Urth Caffè Corporation
April 24, 2020
Page 7



Accordingly, if the LWDA declines to intervene or act within time prescribed by the Labor Code, 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

Enclosure: Exhibit A – Letter to the LWDA, dated March 9, 2020 (“Original Notice”).

EXHIBIT A

March 9, 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)

Urth Payroll Services, Inc.
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Payroll Services, Inc.
c/o Shallom Berkman, Agent for Service of
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451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
451 S. Hewitt Street
Los Angeles, CA 90013

Urth Caffé Corporation
c/o Shallom Berkman, Agent for Service of
Process
451 S. Hewitt Street
Los Angeles, CA 90013

Re: **Cesar Escalante's Wage and Hour Claims Against Urth Payroll Services, Inc. and Urth Caffé Corporation**

Dear Labor and Workforce Development Agency, Urth Payroll Services, Inc., and Urth Caffé Corporation:

Please be advised that Cesar Escalante ("Claimant") has retained our firm to represent him for claims against his former employers Urth Payroll Services, Inc. and Urth Caffé (together, "the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erick Dos Santos

Alex Kuner

Monique Rodriguez

Code violations Claimant claims that the Company committed against him and all other current and former employees of the Company in California. Claimant provides this notice in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, “PAGA”), Labor Code § 2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek civil penalties, attorneys’ fees, and costs, accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and 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 (collectively the “aggrieved employees”).

FACTUAL BACKGROUND

Urth Payroll Services, Inc. owns and operates Urth Caffé, a café chain that specializes in offering heirloom organic coffee and health conscious cuisine. Urth Caffé Corporation is believed to own and manage Urth Payroll Services, Inc. The Company is headquartered and has its principal place of business in Los Angeles, California.

The Company employed Claimant as a General Manager from approximately June 2019 to August 2019. Claimant typically worked five days a week from approximately 5:00 a.m. to 5:00 p.m. or 12:00 p.m. to 12:00 a.m. At all relevant times, the Company classified Claimant as an exempt employee and paid him a salary of \$70,000 per year. In addition, Claimant was eligible for quarterly non-discretionary bonuses. For reasons set forth below, Claimant contends that the Company purposefully misclassified him and other aggrieved employees as “exempt” employees when in fact Claimant and other aggrieved employees should have been classified as “non-exempt” employees.

As a General Manager, Claimant’s job duties with the Company should have primarily consisted of managerial related tasks. However, due to the Company’s severe understaffing of managers and hourly employees, Claimant was required and expected to perform primarily non-managerial tasks, such as bussing tables, running food to customers, operating the cash registers, and helping in the kitchen, more than 51% of the time he worked. For these reasons, Claimant alleges that the Company misclassified him and, on information and belief, other aggrieved employees as “exempt” employees when in fact Claimant and other aggrieved employees should have been classified as “non-exempt” employees. Accordingly, at all times, Claimant was a “non-exempt” employee and should have received the protections afforded by the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

The Company denied Claimant and other aggrieved employees in California specific rights afforded to them under the Labor Code and the applicable IWC Wage Order. Specifically, the Company failed to provide them 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 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 during and upon separation of employment.

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 rest periods. For example, due to the Company's severe understaffing, lack of coverage, and policy to go above and beyond in servicing customers, Claimant and, on information and belief, 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. On information and belief, non-exempt employees, such as cooks and shift supervisors, were required to take on duty meal and/or rest periods due to the Company's chronic understaffing. In addition, due to the Company's misclassification of Claimant and other aggrieved employees as "exempt" employees, the Company did not provide them with meal and/or rest periods. Furthermore, Claimant and, on information and belief, other aggrieved employees were not provided with a second meal period and/or a third rest period when they worked shifts longer than 10 hours. As a result, Claimant and other aggrieved employees were regularly required to work 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, on information and belief, 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 periods. The Company improperly considered the work Claimant and other aggrieved employees performed during their meal periods as non-compensable time and failed to provide any remuneration. On information and belief, other non-exempt employees were also required to clock out and continue working to finish up preparing food or cleaning up their work areas. Additionally, as a direct result of the Company's scheme of purposefully misclassifying Claimant and other aggrieved employees as "exempt" employees, Claimant and other aggrieved employees were not paid all minimum, regular, and overtime wages when they routinely worked in excess of eight hours per day and/or 40 hours per workweek. As a result of being required to work off-the-clock during meal periods and/or of being misclassified as "exempt" employees, 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 eight hours a day and/or forty hours a workweek.

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 example, Claimant and other aggrieved employees were required to use their personal cell phones to communicate with upper management and other co-workers. In addition, the Company also required Claimant and, on information and belief, other aggrieved employees to use their personal vehicles to pick up supplies for the café at local stores. Claimant and, on information and belief, other aggrieved employees did not receive any reimbursement for the use of their personal cell phones or vehicles, 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 and actual wages earned and paid in violation of California law.

In addition, the wage statements issued by the Company did not 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, 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 during and 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.

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 and 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 COMPLIANT MEAL PERIODS
AND AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code §§ 204, 226.7, 512, 558, 1198 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."

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.”

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.”

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 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 204, 210, 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 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..." Section 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 § 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.

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 § 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.

Labor Code § 223 states, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” 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.

As set forth above, the Company 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR 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.

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 and vehicles 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 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.”

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).

As set forth above, the Company violated these requirements by failing to accurately record employee hours 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 and former aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, 1198, 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 and former employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code §§ 201, 202, 203, 210, 1194, 1194.2, 1198 and the "Minimum Wages" section of the Applicable IWC Wage Order)

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 § 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, 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."

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.

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.”

As set forth above, the Company violated these Labor Code sections by not timely paying to Claimant and other aggrieved employees all minimum and overtime wages and meal and/or rest break premium wages, within the required time during and 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 and former aggrieved employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 210, 225.5, 226.3, 558, 558.1, 1174.1, 1197.1 and 2699(f))

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 in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

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.” This includes the owners, officers, directors, or managing agents of the employer. Labor Code § 558.1(b).

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: “(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 §§ 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 underpaid Claimant and aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to timely pay them all regular, minimum, and overtime wages, and meal and rest break 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 §§ 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 and 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 unpaid balance of the full amount of overtime compensation, reimbursements, 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

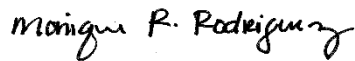
costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

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 and 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 and 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 and 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 and former employees of the Company in California as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez