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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

ARMANDO MARVIN AGUIRRE, as an
individual and on behalf of all similarly
situated employees,

Plaintiff.

v.

BRINKER RESTAURANT
CORPORATION dba CHILI'S;
BRINKER INTERNATIONAL
PAYROLL CO LP; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **20STCV28260**

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Indemnify for Expenditures or Losses in Discharge of Duties.

DEMAND FOR JURY TRIAL

1 Plaintiff ARMANDO MARVIN AGUIRRE (“Plaintiff” or “Mr. Aguirre”) complains and
2 alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
6 Defendants BRINKER RESTAURANT CORPORATION dba CHILI’S; BRINKER
7 INTERNATIONAL PAYROLL CO LP (“CHILI’S” or “Defendants”). The term “Relevant Time
8 Period” or “Time Period” is defined as one (1) year plus sixty-five days prior to the filing of the
9 complaint. Plaintiff reserves the right to amend this complaint to reflect a different “Time Period”
10 as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
14 rest periods or premium compensation in lieu thereof; (4) failure to keep accurate payroll records
15 and provide accurate itemized wage statements; (5) failure to pay wages due upon termination of
16 employment; and (6) failure to indemnify for expenditures or losses in discharge of duties.

17 3. At all relevant times herein, Defendants have consistently maintained and
18 enforced the following unlawful policies and practices against Plaintiff:

- 19 (a) Willfully refusing to pay all hours worked, including both regular and overtime
20 wages;
- 21 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
22 lieu thereof;
- 23 (c) Willfully refusing to permit rest periods or providing compensation in lieu
24 thereof;
- 25 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
26 wages;
- 27 (e) Willfully refusing to pay all wages due upon separation of employment; and
28 (f) Willfully refusing to pay for expenditures or losses in the discharge of their duties.

1 **JURISDICTION AND VENUE**

2 4. This Court has subject matter jurisdiction over the causes of action alleged in this
3 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
4 excluded from exercising subject matter jurisdiction over said causes of action.

5 5. Venue is proper in the County of Los Angeles, because the Defendants maintain
6 their location and transact business in this county, the obligations and liability arise in this county,
7 and work performed by Plaintiff and Aggrieved Employees that form the subject of this action
8 occurred in this county.

9 6. The California Superior Court has jurisdiction in the matter, because of the
10 individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional
11 threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident
12 of and/or domiciled in the State of California. Defendants are a corporation and a partnership
13 doing business in the State of California.

14 7. Further, there is no federal question at issue as the issues herein are based solely on
15 California statutes and law, including the Labor Code, Code of Civil Procedure, Business and
16 Professions Code, and California Rules of Court.

17 **THE PARTIES**

18 **Plaintiff**

19 8. Plaintiff at various relevant times herein, was an employee of the Defendants and
20 entitled to compensation for all hours worked, overtime compensation, and penalties from
21 Defendants. Plaintiff was employed by the Defendants from January 26, 2020 to February 28,
22 2020, in Los Angeles county at Defendants' restaurant located at 4931 Candlewood,
23 Lakewood, CA 90712. Plaintiff was employed by the Defendants during the Relevant Time
24 Period in non-exempt hourly position as a non-exempt, hourly cook. Each of the Aggrieved
25 Employees are identifiable, current and/or formerly similarly situated persons who were
26 employed in non-exempt hourly positions such as, including but not limited to, cooks, waiters,
27 cashiers, and related positions in California for the Defendants during the Relevant Time Period.

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1 **Defendants**

2 9. Plaintiff is informed and believes, and based thereon alleges that, CHILI's is a
3 corporation operating restaurant chains throughout California and is and/or was the employer of
4 the Plaintiff and Aggrieved Employees during the Relevant Time Period. During the Relevant
5 Time Period, Defendants employed Plaintiff and similarly situated persons and failed to pay
6 Plaintiff and Plaintiff Class for all hours worked as a result of working off the clock before or
7 after the start of their shifts, failing to pay minimum and overtime wages, failing to provide meal
8 periods or pay a meal period penalty in lieu of, failed to provide rest periods or pay a rest period
9 penalty in lieu of; failed to reimburse employees for necessary business expenditures, failed to
10 pay all wages upon end of employment, and failed to provide accurate and itemized wage
11 statements. On information and belief, and based thereon alleges that Defendants are conducting
12 business in good standing in California.

13 10. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
14 a corporation and partnership doing business in the State of California, Los Angeles county and/or
15 were the employers of Plaintiff and similarly situated employees during the Relevant Time Period.
16 Plaintiff is informed and believes, Defendants operate restaurant chains in the state of California,
17 including Los Angeles County.

18 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
19 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
20 inclusive, but on information and belief alleges that said Defendants are legally responsible for
21 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
22 capacities of the DOE Defendant when ascertained.

23 12. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in
24 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
27 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
28 joint employers and conspire with one another to increase profits by engaging in the conduct

described in this complaint.

13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

PAGA ADMINISTRATIVE PREREQUISITE

13. This complaint, Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee was employed by Defendants and did not receive all wages due, was not paid regular wage, was not paid overtime, was not provided accurate wage statements, was not reimbursed for necessary expenditures, and was not able to take lawful meal and rest breaks or receive premium compensation in lieu thereof.

14. Prior to filing this complaint, on May 22, 2020, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff's original letter sent to the LWDA on May 22, 2020, is attached hereto as Exhibit A.

15. More than 65 days have passed since Plaintiff submitted his May 22, 2020, notice to the LWDA and Defendants of the specific alleged Labor Code violations and the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendants' intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his May 22, 2020, PAGA notice.

FACTUAL ALLEGATIONS

16. This lawsuit arises out of an ongoing wrongful scheme by Defendants to deny its employees the benefits due under California's wage and hour laws for work performed in California. Defendants wrongfully refused to pay Plaintiff and Aggrieved Employees regular wages, overtime compensation, business expense reimbursements, and other statutory benefits mandated by California.

17. Throughout the Relevant Time Period, Defendants employed Plaintiff and Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly, these positions remain non-exempt from California's wage and hour laws yet Defendants failed to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-exempt employees as required by law.

18. During the Relevant Time Period, Defendants failed to compensate Plaintiff and Aggrieved Employees legally mandated minimum wages and overtime rate for all work performed during their shifts in violation of the Labor Code and the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. Specifically, Defendants paid Plaintiff and Aggrieved Employees \$13.00 (thirteen) dollars per hour, which was less than the minimum wage for Los Angeles county. Plaintiff and Plaintiff class was employed within Los Angeles County, which had a minimum wage increase to \$13.25 effective July 1, 2019 for employers with less than twenty-five employees, and to \$14.25 for the employers with twenty-six (26) or more employees. During the course of Plaintiff's employment with Defendants, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime compensation at time and a half rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or statutes. Further, Plaintiff and Aggrieved Employees regularly worked through meal and rest breaks, and were not paid the legally mandated regular or overtime wages for the hours they worked.

1 19. During the Relevant Time Period, Defendants, and each of them failed and/or
2 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
3 reasonably provide meal and/or rest breaks and/or shift relief for Plaintiff and Aggrieved
4 Employees, thereby causing members of the Aggrieved Employees to work without being given
5 paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and
6 without being given a thirty (30) minute meal period for shifts of at least five (5) hours and second
7 thirty (30) minute meal periods for shifts of at least ten (10) hours during which Aggrieved
8 Employees were relieved of all duties and free to leave the premises. Defendants further failed
9 and/or refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner and/or
10 provide shift relief for Plaintiff and Aggrieved Employees so as to reasonably ensure meal and/or
11 rest breaks were taken within the required statutory time frame as required by law. Furthermore,
12 Defendants failed and/or refused to pay any Aggrieved Employee one (1) hour's pay at the
13 employees' regular rate of pay as premium compensation for failure to provide rest and/or meal
14 periods or to providing such rest and/or meal periods within the statutory time frame as a result
15 of their scheduling policy.

16 20. As a result of Defendants' aforementioned failure to pay all wages to Plaintiff and
17 Aggrieved Employees, among other things, Defendants failed to maintain accurate payroll
18 records showing the accurate number of hours worked, accurate rate of pay for each hour worked,
19 premium wages earned, and accurate gross and net wages paid in violation of Labor Code sections
20 226, 1174, and 1174.5.

21 22. Plaintiff and Aggrieved Employees who ended their employment during the Relevant
22 Time Period, were not paid the above due compensation or premium compensation timely upon
23 the termination of their employment as required by Labor Code.

24 23. Defendant further failed to reimburse Plaintiff and Aggrieved Employees for any
25 necessary business expenses. Defendants had a policy and/or practice of failing to reimburse
26 Plaintiff and Aggrieved Employees for incurring necessary business expenditures as required by
27 Labor Code sections 2802. Specifically, Defendants required Plaintiff and Aggrieved Employees
28 to maintain uniforms including with Defendants' logo, that were required to be worn while

1 working at Defendants' restaurants. Defendants required Plaintiff and Aggrieved Employees to
2 wash and maintain Defendant's uniforms. Defendants failed to reimburse Plaintiff and Aggrieved
3 Employees for the cost or time spent washing and maintaining Defendant's uniforms in violation
4 of the Labor Code and the IWC Wage Orders.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
7 **OVERTIME**

8 **(Labor Code Sections 226.7 and 512)**

9 **(Plaintiff Against All Defendants)**

10 24. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
11 complaint as if fully set forth herein.

12 25. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
13 and forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees
14 minimum wage for all hours worked and overtime premium for hours worked in excess of over
15 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendants.
16 Defendants failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
17 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
18 Defendants. Defendants failed to schedule Plaintiff and Aggrieved Employees in such a manner
19 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
20 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
21 forty (40) hours per week. As such, Plaintiff and Aggrieved Employees seek overtime in an
22 amount according to proof, which they earned and accrued one (1) year prior to filing this
23 complaint, according to proof, as part of the civil penalty pursuant to Labor Code section 558,
24 subdivision (a).

25 26. Defendants willfully violated the Labor Code by failing to pay Plaintiff and
26 Aggrieved Employees all wages, including both minimum wage and overtime. Specifically,
27 Defendants paid Plaintiff and Aggrieved Employees \$13.00 (thirteen) dollars per hour, which was
28 less than the minimum wage for Los Angeles county. Plaintiff and Plaintiff class was employed

1 within Los Angeles County, which had a minimum wage increase to \$13.25 effective July 1, 2019
2 for employers with less than twenty-five employees, and to \$14.25 for the employers with twenty-
3 six (26) or more employees. During the course of Plaintiff's employment with Defendants,
4 Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per day, but
5 were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees primarily
6 performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the
7 applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff and Aggrieved
8 Employees to overtime compensation at time and a half rate, and when applicable, double time
9 rates as set forth by the applicable Wage Orders, regulations and/or statutes. Further, Plaintiff and
10 Aggrieved Employees regularly worked through meal and rest breaks, and were not paid the
11 legally mandated regular or overtime wages for the hours they worked.

12 27. Since the LWDA has not indicated that it will be investigating more than 65 days
13 since Plaintiff provided notice, and because Defendants took no corrective action to remedy the
14 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
15 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
16 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
17 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
18 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

19 28. Plaintiff is informed and believes that Defendants have violated, and continue to
20 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
21 minimum wages and overtime.

22 29. Plaintiff, as a personal representative of the general public, will and does seek to
23 recover any and all penalties for each and every violation shown to exist or to have occurred
24 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
25 otherwise only available to public agency enforcement actions. Funds recovered will be
26 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
27 reimbursed to the LWDA.

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1 revoke the agreement at any time.”

2 35. The burden to prove that a meal or rest period violation has occurred normally
3 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,
4 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
5 presumption of meal and rest period violations is created, shifting the burden to the employer to
6 prove that meal and rest period violations did not occur.

7 36. During the Relevant Time Period, Defendants, and each of them failed and/or
8 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
9 reasonably provide meal breaks and/or shift relief for Plaintiff and Aggrieved Employees, thereby
10 causing members of the Aggrieved Employees to work without being given a thirty (30) minute
11 meal period for shifts of at least five (5) hours and second thirty (30) minute meal periods for
12 shifts of at least ten (10) hours during which Aggrieved Employees were relieved of all duties and
13 free to leave the premises. Defendants further failed and/or refused to schedule Plaintiff and
14 Aggrieved Employees in an overlapping manner and/or provide shift relief for Plaintiff and
15 Aggrieved Employees so as to reasonably ensure meal breaks were taken within the required
16 statutory time frame as required by law. Furthermore, Defendants failed and/or refused to pay
17 any Aggrieved Employee one (1) hour's pay at the employees' regular rate of pay as premium
18 compensation for failure to provide meal periods or to providing such meal periods within the
19 statutory time frame as a result of their scheduling policy.

20 37. Defendants failed to keep accurate records of the meal periods taken by Plaintiff
21 and Aggrieved Employees.

22 38. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
23 than five (5) hours in a workday.

24 39. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
25 worked more than ten (10) hours in a workday.

26 40. At all times relevant hereto, Defendants failed to offer or to schedule non-exempt
27 positions in a manner so as to reasonably provide meal and/or work free meal period as required
28 by Labor Code sections 226.7 and 512.

1 41. Defendants' failure to schedule Plaintiff and Aggrieved Employees in such a way
2 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
3 and/or to provide on-duty meal periods in accordance with the applicable IWC Wage Order, has
4 caused Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
5 ascertained according to proof at trial.

6 42. Further, Defendants' failure to maintain accurate records of the meal periods taken
7 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
8 and shifts the burden to Defendants to prove they did not occur.

9 43. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
10 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
11 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
12 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
13 by the Labor Code and/or other statutes.

14 44. Since the LWDA has not indicated that it will be investigating and 65 days have
15 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy
16 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
17 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
18 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
19 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
20 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

21 45. Plaintiff is informed and believes that Defendants have violated and continue to
22 violate provisions of the Labor Code and applicable Wage orders related to the payment of
23 minimum wages, including overtime.

24 46. Plaintiff, as a personal representative of the general public, will and does seek to
25 recover any and all penalties for each and every violation shown to exist or to have occurred
26 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
27 otherwise only available to public agency enforcement actions. Funds recovered will be
28 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being

1 reimbursed to the LWDA.

2 47. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
3 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
6 **PREMIUM COMPENSATION IN LIEU THEREOF**

7 **(Labor Code Sections 226.7 and 512)**

8 **(Plaintiff against All Defendants)**

9 48. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
10 preceding paragraphs of this complaint as if fully set forth herein.

11 49. Labor Code section 226.7 provides that employers authorize and permit all
12 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

13 50. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
14 provide an employee rest periods in accordance with this section, the employer shall pay the
15 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
16 that the rest period is not provided.

17 51. During the Relevant Time Period, Defendants, and each of them failed and/or
18 refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner so as to
19 reasonably provide rest breaks and/or shift relief for Plaintiff and Aggrieved Employees, thereby
20 causing members of the Aggrieved Employees to work without being given paid ten (10) minute
21 rest periods for every four (4) hours or major fraction thereof worked. Defendants further failed
22 and/or refused to schedule Plaintiff and Aggrieved Employees in an overlapping manner and/or
23 provide shift relief for Plaintiff and Aggrieved Employees so as to reasonably ensure rest breaks
24 were taken within the required statutory time frame as required by law. Furthermore, Defendants
25 failed and/or refused to pay any Aggrieved Employee one (1) hour's pay at the employees' regular
26 rate of pay as premium compensation for failure to provide rest periods or to providing such rest
27 and/or meal periods within the statutory time frame as a result of their scheduling policy.

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1 52. Furthermore, Defendants failed to provide Plaintiff and Aggrieved Employees
2 with duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest
3 periods all together in violation of Labor Code section 226.7 and 512.

4 53. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
5 Aggrieved Employees.

6 54. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
7 more than four (4) hours in a workday.

8 55. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff
9 and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
10 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
11 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
12 ascertained according to proof at trial.

13 56. Plaintiff, by virtue of Plaintiff's employment with Defendants, Defendants' failure
14 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendants' policy of
15 requiring employees to work through their rest periods without receiving compensation in lieu
16 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
17 satisfied all prerequisites to serve as a representative of the general public to enforce California's
18 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

19 57. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
20 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
21 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
22 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
23 by the Labor Code and/or other statutes. Plaintiff, as a representative of the people of the State of
24 California, will seek any and all penalties otherwise capable of being collected by the Labor
25 Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in
26 Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any
27 alleged violation of the following provisions: 226.7 and 512.

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1 58. Plaintiff, as a personal representative of the general public, will and does seek to
2 recover any and all penalties for each and every violation shown to exist or to have occurred
3 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
4 otherwise only available to public agency enforcement actions. Funds recovered will be
5 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
6 reimbursed to the LWDA.

7 59. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
8 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATION OF PAGA FOR FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
11 **AND TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(Labor Code Sections 1174 and 226, subdivision (A), (E))**

13 **(Plaintiff against All Defendants)**

14 60. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
15 preceding paragraphs of this complaint as if fully set forth herein.

16 61. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
17 location in California or at the plant or establishment at which the employees are employed,
18 payroll records showing the hours worked daily, and the wages paid to each employee. Plaintiff
19 is informed and believes, based thereon alleges, that Defendants willfully failed to make or keep
20 accurate records for Plaintiff and similarly-aggrieved employees.

21 62. Labor Code section 226, subdivision (a), states in pertinent part that, "every
22 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
23 employees, either as a detachable part of the check, draft, or voucher paying the employee's
24 wages, or separately when wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
26 . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
27 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
28 only the last four digits of his or her social security number or an employee identification number

1 other than a social security number; (8) the name and address of the legal entity that is the
2 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
3 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

4 63. Defendants knowingly and intentionally failed to provide timely and accurate
5 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
6 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
7 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
8 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
9 Employees.

10 64. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
11 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
12 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
13 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

14 65. Plaintiff, as a personal representative of the general public, will and does seek to
15 recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
17 otherwise only available to public agency enforcement actions. Funds recovered will be
18 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
19 reimbursed to the LWDA.

20 66. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
21 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

3 **TERMINATION OF EMPLOYMENT**

4 **(Labor Code Sections 201 and 203)**

5 **(Plaintiff against All Defendants)**

6 67. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
7 preceding paragraphs of this complaint as if fully set forth herein.

8 68. Plaintiff is informed and believes that certain members of the Aggrieved
9 Employees who ended their employment with Defendants during the Relevant Time Period, were
10 entitled to be promptly paid both minimum wage and lawful overtime compensation and other
11 premiums, as required by Labor Code sections 201 and 203.

12 69. Defendants refused and/or failed to promptly compensate Aggrieved Employees
13 wages owed as a result of Defendants' failure to provide meal and/or rest periods as well as pay
14 both minimum and overtime compensation owed for work performed for Defendant.

15 70. Plaintiff, by virtue of his employment with Defendants, is an aggrieved employee
16 with standing to bring an action under the PAGA and has suffered injury as to one or more
17 violations committed by Defendants. Plaintiff has satisfied all prerequisites to serve as a
18 representative of the general public to enforce California's labor laws, and the penalty provisions
19 identified in Labor Code section 2699.5.

20 71. Plaintiff, as a representative of the people of the State of California, will seek any
21 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
22 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
23 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
24 201-203, 226, 226.7, 510, 512, 1174, and 1194.

25 72. Plaintiff, as a personal representative of the general public, will and does seek to
26 recover any and all penalties for each and every violation shown to exist or to have occurred
27 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
28 otherwise only available to public agency enforcement actions. Funds recovered will be

distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

73. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO INDEMNIFY FOR EXPENDITURES OR LOSSES IN DISCHARGE OF DUTIES

(Labor Code Section 2802)

(Plaintiff against All Defendants)

74. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

75. Labor Code section 2802 states, "An 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..."

76. Plaintiff and the Aggrieved Employees were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties.

77. Defendants knowingly, willingly and intentionally attempted to offset the cost of doing business on the Plaintiff and Aggrieved Employees.

78. Defendants had a practice and policy of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures, specifically the cost of washing and maintaining Defendant's uniforms.

79. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of "necessary expenditures or losses" which shall include all reasonable costs, including, but not limited to, attorney's fees and interest.

80. Plaintiff by virtue of his employment with Defendants and the Defendants' policy of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendants' cost of doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary

1 expenditures, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
2 has satisfied all prerequisites to serve as a representative of the general public to enforce
3 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

4 81. Plaintiff, as a representative of the people of the State of California, will seek any
5 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
6 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
7 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
8 201-203, 226, 226.7, 510, 512, 1174, and 1194.

9 82. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
12 otherwise only available to public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
14 reimbursed to the LWDA.

15 83. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
16 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 19 1. For civil penalties for each violation for Plaintiff and each Aggrieved
20 Employee as provided by law, including, but not limited to, those civil
21 penalties provided by statute, provided by PAGA;
22 2. For costs of suit and expenses incurred herein pursuant to Labor Code section
23 2699, subdivision (g), and any other statutory basis or pursuant to the
24 California Rules of Court;

25 ///

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28 ///

- 1 3. For reasonable attorneys' fees pursuant to Labor Code section 2699,
2 subdivision (g), and any other statutory basis; and
3 4. For all such other and further relief as the Court may deem just and proper.
4 5.

5 Dated: July 27, 2020

MAHONEY LAW GROUP, APC

6 
7

8 By: _____

9 Kevin Mahoney, Esq.
10 Lilit Tunyan, Esq.
11 Attorneys for Plaintiff ARMANDO MARVIN
12 AGUIRRE
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Dated: July 27, 2020



Kevin Mahoney, Esq.
Lilit Tunyan, Esq.
Attorneys for Plaintiff ARMANDO MARVIN
AGUIRRE

EXHIBIT A



Kevin Mahoney
(562) 590-5550 phone
(562) 590-8400 facsimile
kmahoney@mahoney-law.net

May 22, 2020

VIA ELECTRONIC FILLING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

VIA U.S. MAIL & CERTIFIED MAIL # 7019 0700 0001 7572 1144

Return Receipt Requested

Brinker Restaurant Corporation
3000 Olympus Boulevard
Dallas, TX 75019

VIA U.S. MAIL & CERTIFIED MAIL # 7019 0700 0001 7572 1151

Return Receipt Requested

Brinker International Payroll Co LP
3000 Olympus Boulevard
Dallas, TX 75019

VIA U.S. MAIL & CERTIFIED MAIL # 7019 0700 0001 7572 1168

Return Receipt Requested

Agent for service of process
The Prentice-Hall Corporation System, Inc.
251 Little Falls Drive
Wilmington, DE 19808

Re: *Aguirre v. Brinker Restaurant Corporation dba Chili's Restaurant et al.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 et. seq.**

To: California Labor and Workforce Development Agency and Brinker Restaurant Corporation

From: Armando Marvin Aguirre, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

I. FACTUAL STATEMENT

Please note that the firm, Mahoney Law Group, APC, represents the interests of Armando Marvin Aguirre ("Employee"), who intends to file a complaint alleging various Labor Code

violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

Brinker Restaurant Corporation ("Employer") owns, operates and franchises Chili's and Maggiano's Little Italy restaurant chains throughout the United States of America including the state of California. Employee alleges Employer violated various sections of the Labor Code, including, but not limited, to sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1174, 1194, 1197 and 2802 by failing to provide Employee and all other aggrieved employees all wages for all hours worked, failure to pay overtime wages, failure to authorize and permit rest periods or premium wages in lieu thereof, failure to provide meal periods or premium wages in lieu thereof, failure to provide accurate itemized wage statements, and failure to indemnify employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

Employer failed to pay Employee and other aggrieved employees for all hours worked at the legally mandated wage rates. Employer failed to pay Employee and other aggrieved employees all legally mandated wages, including regular and overtime wages, for all work performed, in violation of California law. Specifically, Employer paid Employee and other aggrieved Employees \$13 per hour which was less than the minimum wage for Los Angeles county. Employee was employed within Los Angeles County, which had a minimum wage increase to \$13.25 effective July 1, 2019 for employers with less than twenty-five employees, and to \$14.25 for the employers with twenty-six (26) or more employees. During the course of Employee's employment with Employer, Employee and other aggrieved employees regularly worked in excess of eight (8) hours per day, but were routinely not paid for all hours worked. As such, Employee and other aggrieved employees were not compensated for the time worked during these periods. Employer's conduct is in violation of Labor Code sections 510, 1182.12, 1194 and 1197, and is actionable under PAGA.

Employer also failed to provide Employee and other aggrieved employees with timely uninterrupted meal and rest periods. Employer had no meal/rest break policy and did nothing to ensure client received meal or rest breaks. As a result, Employee and other aggrieved employees routinely worked through mandatory meal/rest breaks due to inadequate coverage. Thus, Employee and his co-workers did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, and is also actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Employee and other aggrieved employees with complete and accurate wage statements showing the actual hours worked correct premium wages earned per pay period as well as the total hours worked for the pay period. In addition, Employer failed to include Employee's and other aggrieved employees' correct hourly rate on their pay statements. Employer's conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

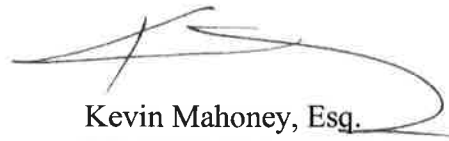
Employer also failed to indemnify Employee and aggrieved employees all necessary expenditures incurred in direct discharge of their duties. During the course of employment,

Employee and his co-workers were required to incur various business expenses at their own cost, including, but not limited to washing and otherwise maintaining the uniform hats bearing Employer's logo. Employer failed to provide any reimbursement to Employee and other aggrieved employees for the cost of using their personal cellphone and vehicle in violation of Labor Code section 2802.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its practice and procedure of failing to pay all wages earned to former employees.

Employee will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response. Please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mahoney', with a large, sweeping flourish extending to the right.

Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC