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**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 04 2020

CLERK OF THE SUPERIOR COURT
By C. Roberts Deputy

6 Attorneys for Plaintiff, JONATHAN FLORES,
on behalf of himself and in his representative capacity as private attorney genera

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11 JONATHAN FLORES, an individual, on behalf
12 of himself and in his representative capacity as
private attorney general;

14 Plaintiff,

15 vs.

16
17 WEST COAST DINER MANAGEMENT,
18 INC., a California corporation, DOING
BUSINESS AS DENNY'S and DOES 1-50,
19 inclusive,

20 Defendants.

Case No. **RG 20073419**
Assigned For All Purposes to:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

JURY TRIAL DEMANDED



21
22
23
24 Plaintiff JONATHAN FLORES ("Plaintiff"), individually and on behalf of all others
25 similarly situated, hereby asserts claims against defendants WEST COAST DINER
26 MANAGEMENT, INC. dba DENNY'S, a California corporation ("West Coast") and DOES 1-
27 50, inclusive (collectively "Defendants") in this complaint as follows:

28 **INTRODUCTION**

1 1. This is a representative action for recovery of penalties under the Private
2 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits
3 “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and
4 all other current and former employees, to recover civil penalties and address an employer’s
5 violations of the California Labor Code.

6 2. Plaintiff brings this action pursuant to the PAGA on a representative basis.

7 3. Plaintiff alleges that Defendants committed the violations set forth herein against
8 both him and the group of aggrieved employees that he seeks to represent: Any and all persons
9 who are or were employed as non-exempt restaurant employees, however titled, in Defendants’
10 restaurant locations (the “Aggrieved Employees” or “Non-Exempt Employees”) throughout the
11 State of California during the liability period.

12 4. Plaintiff brings this suit on behalf of himself and the Aggrieved Non-Exempt
13 Employees during the relevant time period to recover civil penalties and address the employer’s
14 violations of the California Labor Code and the IWC Wage Order 5-2001.

15 5. Throughout the liability period, Defendants consistently maintained and enforced
16 against its Non-Exempt Employees unlawful practices and policies in violation of California
17 state wage and hour laws, including failing to lawfully and accurately pay Plaintiff and
18 Aggrieved Employees for all hours worked, including failing to pay reporting time pay; failing
19 to lawfully authorize and permit rest periods; failing to pay one hour of pay at the employee’s
20 regular rate of pay when legally mandated rest periods were not lawfully authorized and
21 permitted; failing to reimburse necessary expenses; failing to timely pay all owed wages at
22 termination; failing to provide accurate itemized wage statements; and failing to keep accurate
23 records.

24 6. Such actions and policies, as described herein, were and continue to be in
25 violation of the California Labor Code. Plaintiff, on behalf of himself and all Aggrieved
26 Employees, brings this action pursuant to the California Labor Code to seek penalties for
27 violations of the California Labor Code, including sections 201, 202, 203, 204, 210, 218.5,
28 218.6, 226, 226.3, 226.7, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2698 *et seq.*, 2802,

1 the Wage Orders, and applicable IWC California Wage Orders and California Code of
2 Regulations, Title 8, section 11000 *et seq.*

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction over this action pursuant to the California Constitution
5 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
6 except those given by statute to other courts. The statutes under which this action is brought do
7 not give jurisdiction to any other court. This Court has jurisdiction over Defendants because,
8 upon information and belief, each Defendant is either a resident of California, has sufficient
9 minimum contacts in California, or otherwise intentionally avails itself of the California market
10 so as to render the exercise of jurisdiction over them by the California Courts consistent with
11 traditional notions of fair play and substantial justice. Defendants have done and are doing
12 business throughout California and Alameda County by maintaining and operating a number of
13 facilities throughout California. The unlawful acts alleged herein have a direct effect on Plaintiff
14 and the other similarly situated Non-Exempt Employees within Alameda County and throughout
15 the State of California and Defendants have employed hundreds of employees as Non-Exempt
16 Employees in Alameda County and throughout California.

17 8. The California Superior Court also has jurisdiction in this matter because the civil
18 penalties sought are presently believed to be under the seventy-five thousand dollar (\$75,000.00)
19 jurisdictional threshold for Federal Court diversity jurisdiction and the aggregate potential
20 damages and recovery by all of the claims of the aggrieved employees placed in controversy by
21 Plaintiff's claims, is presently believed to be under the five million dollar (\$5,000,000.00)
22 threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue,
23 as the issues herein are based solely on California statutes and law, including the Labor Code,
24 IWC Wage Orders, the California Code of Civil Procedure, and the California Civil Code.

25 9. Venue is proper in Alameda County pursuant to Code of Civil Procedure section
26 395.5 because one or more of the violations alleged in this Complaint arise in that county. Venue
27 as to Defendant is also proper in this judicial district pursuant to Code of Civil Procedure section
28 395.

10. Venue is proper in this Court because upon information and belief, one or more of the Defendants transact business, or have offices in this County and the acts or omissions alleged herein took place in this County.

PARTIES

11. Plaintiff Jonathan Flores is an individual who, at all times relevant herein, resided in the State of California. He was employed by Defendants from August 2017 to September 2019. He has held positions as a Server and as a Manager.

12. Plaintiff worked as a non-exempt employee for Defendants at their Denny's restaurant location at 1255 De La Torre; Salinas, CA 93905.

13. Defendant West Coast Diner Management, Inc. is a California corporation in good standing. West Coast Diner Management, Inc.'s headquarters is located at 3550 Mowry Ave. #301; Fremont, CA 94538. West Coast Diner Management, Inc. operates numerous Denny's family restaurant locations throughout California.

14. Plaintiff was employed by Defendants during the liability period as a non-exempt restaurant employee in Salinas, California.

15. Plaintiff and the members of the aggrieved group were employed by Defendants in their restaurants as non-exempt restaurant employees, however titled, (the “Aggrieved Employees” or “Non-Exempt Employees”) during the liability period. This includes, without limitation, servers, bussers, hosts, cooks, and all other restaurant personnel.

16. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of West Coast Management, Inc.'s officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

17. Whenever reference in this Complaint reference is made to “Defendants,” such allegations shall be deemed to mean the acts of Defendants acting individually, jointly, and/or severally.

18. The true names and capacities of Defendants, whether individual, corporate,

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
3 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become
5 known.

6 19. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
7 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
8 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly,
9 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
10 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the
11 extent of the liability of the Defendants as alleged herein.

12 20. Plaintiff is further informed and believes, and thereon alleges, that at all times
13 material herein, each Defendant was completely dominated and controlled by its co-Defendants
14 and each was the alter ego of the other. Whenever and wherever reference is made in this
15 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
16 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
17 severally. Whenever and wherever reference is made to individuals who are not named as
18 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
19 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
20 their respective employments.

21 **FACTUAL ALLEGATIONS**

22 21. Plaintiff incorporates the allegation set forth above.

23 22. Plaintiff typically worked approximately 35 hours a week and 5 days a week.

24 23. Plaintiff and the Non-Exempt Employees were, and at all times pertinent hereto,
25 have been non-exempt employees within the meaning of the California Labor Code, and the
26 implementing rules and regulations of the IWC California Wage Orders.

27 24. At all times relevant herein, the hours and working conditions of Plaintiffs and
28 other similarly situated employees were governed by the California Labor Code and IWC Wage

1 Order 5-2001.

2 25. During the relevant time frame, Defendants compensated Plaintiff and the Non-
3 Exempt Employees based upon an hourly wage.

4 26. Plaintiff and the putative Aggrieved Employees were employed by Defendants as
5 non-exempt restaurant employees in Defendants' Denny's restaurants throughout the State of
6 California.

7 27. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
8 Employees were systematically not authorized and permitted to take one net ten-minute paid,
9 rest period for every four hours worked or major fraction thereof, which is a violation of the
10 Labor Code and IWC wage order.

11 28. Defendants maintained and enforced scheduling practices, labor budgets, staffing
12 models, policies, and imposed work demands that frequently required Plaintiff and the Non-
13 Exempt Employees to forego their lawful, paid rest periods of a net ten minutes for every four
14 hours worked or major fraction thereof. Such requisite rest periods were not authorized and
15 permitted.

16 29. Despite the above-mentioned rest period violations, Defendants did not
17 compensate Plaintiff, and on information and belief, did not pay Non-Exempt Employees one
18 additional hour of pay at their regular rate as required by California law, including Labor Code
19 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods
20 were not authorized and permitted.

21 30. In addition, Defendants also failed to reimburse Plaintiff and the Aggrieved
22 Employees for necessary expenses, including writing utensils (like pens), note pads/paper, shoes,
23 and uniform maintenance.

24 31. Moreover, Defendants failed to provide reporting time pay to Plaintiff and
25 Aggrieved Employees when they were required to report to work and were furnished with less
26 than half said employee's usual or scheduled day's work.

27 32. Defendants failed to provide accurate itemized wage statements to Plaintiff and
28 the Aggrieved Employees that properly and accurately itemized the actual hours worked, rates of

1 pay including reporting time pay and rest period premiums, and the employer's correct name.

2 33. Moreover, Defendants have consistently failed to pay all wages owed at
3 separation and have failed to provide accurate itemized wage statements to Plaintiffs reflecting
4 all wages earned and owed. Such violations have resulted, at least in part, from Defendant's
5 consistent decision not to pay reporting time pay and premium wages for non-provided rest
6 periods.

7 34. All Non-Exempt Employees, including Plaintiff, are similarly situated in that they
8 are all subject to Defendants' uniform policies and systemic practices as specified herein.

9 35. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
10 were advised by skilled lawyers and other professionals, employees, and advisors with
11 knowledge of the requirements of California's wage and employment laws.

12 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
14 thereof for resignations without prior notice as the case may be) they had a duty to accurately
15 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
16 straight time wages, overtime, meal and rest period premiums, and that Defendants had the
17 financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or
18 intentionally failed to do so in part because of the above-specified violations.

19 **Failure To Authorize And Permit Lawful Rest Periods**

20 37. Plaintiff incorporates by reference and realleges each and every allegation
21 contained above, as though fully set forth herein.

22 38. Labor Code section 1198 makes it unlawful to employ an employee under
23 conditions of labor that are prohibited by the applicable Wage Order.

24 39. Pursuant to the IWC wage order 5-2001, Plaintiff's and Aggrieved Employees'
25 employment by Defendants, "Every employer shall authorize and permit all employees to take
26 rest periods, which insofar as practicable shall be in the middle of each work period.... [The]
27 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
28 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest

1 period time shall be counted as hours worked, for which there shall be no deduction from
2 wages.”

3 40. Labor Code §226.7(a) prohibits an employer from requiring any employee to
4 work during any rest period mandated by an applicable order of the IWC.

5 41. Defendants were required to authorize and permit employees such as Plaintiff and
6 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the
7 total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
8 fraction thereof, with no deduction from wages.

9 42. Specifically, Defendants were required to authorize and permit Plaintiff and the
10 Aggrieved Employees to take one lawful net ten minute rest period on a shift between 3.5 and 6
11 hours; to take two (2) lawful net ten minute rest periods on shifts over six hours to ten hour shifts
12 and three (3) lawful net ten (10) minute rest periods on shifts over ten hours.

13 43. Despite said requirements of the IWC wage orders applicable to Plaintiff’s and
14 Class Member’s employment with Defendants, Defendants failed and refused to authorize and
15 permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
16 every four (4) hours worked, or major fraction thereof.

17 44. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of
18 pay for each day that a rest period violation occurred. On information and belief, the other
19 members of the Aggrieved Group endured similar violations as a result of Defendants’ rest
20 period policies and practices and Defendant did not pay said Aggrieved Employees premium pay
21 as required by law. This constitutes a separate and independent violation of Labor Code section
22 226.7, 1198, and the Wage Order 5-2001.

23 45. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
24 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
25 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
26 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
27 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours,
28 and by their failure to provide compensation for such unprovided rest periods as alleged herein,

Defendants willfully violated the provisions of Labor Code sections 226.7, 1198, and the applicable IWC Wage Order(s).

Failure To Provide Reporting Time Pay

46. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage as established by the Industrial Welfare Commission.

47. Labor Code section 1198 provides that the 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.

48. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

49. Section 5 of Wage Order 5-2001 (Reporting Time Pay) provides:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

50. Labor Code Section 1198 states: "The 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."

51. The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of

hours, and who are [] deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

52. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. The IWC's purpose in adopting reporting time pay requirements was two-fold: "to compensate employees" and "encourag[e] proper notice and scheduling". *Id.* at pp. 1111-1112.

53. Plaintiff and the Aggrieved Employees were required by Defendants to report to work and were furnished less than half said employee's usual or scheduled day's work, but were not paid for half the usual or scheduled day's work, and in no event for less than two (2) hours as required by law.

54. In violation of the Labor Code and the Wage Order Defendants knowingly and willfully refused to perform their obligations to pay Plaintiff and the Aggrieved Employees reporting time pay as required under law, on days that Plaintiff and Aggrieved Employees reported to work their scheduled shifts, but without prior warning sent home or were not provided work, and ordered to leave the premises without pay.

55. By the failure to pay hourly wages for reporting time, Defendants willfully violated Labor Code sections 1194, 1197, 1198, and IWC Wage Order 5-2001.

Failure To Timely Pay Wages Due And Payable During Employment

56. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

57. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

58. The wages required by Labor Code §§ 226.7, 510, 1194, 1198, IWC Wage Order 5-2001 and other sections became due and payable to each employee in each month that he or she was not paid reporting time pay, provided with a rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

59. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

60. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure To Timely Pay Wages Owed At Separation

61. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

62. Labor Code § 201 requires employer to pay all wages earned and unpaid at the time the employer discharges an employee from employment.

63. Labor Code § 202 requires Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

64. Defendants violated Labor Code §201-202 by failing to timely pay all wages due as prescribed by statute.

65. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

66. While Defendants failed to timely pay all wages as required by Labor Code 201 and 202, it also did not pay waiting time penalties. This is a violation of Labor Code §203.

67. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, reporting time wages, overtime, and premium rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

1 68. More than thirty (30) days have passed since affected Aggrieved Employees have
2 left Defendants' employ, and on information and belief, they have not received payment
3 pursuant to Labor Code § 201-203.

4 **Failure To Provide Accurate Itemized Wage Statements**

5 69. This action is brought under Labor Code §226, which sets forth reporting
6 requirements for employers when paying wages, including,

7 “Every employer shall, semimonthly or at the time of each payment of wages, furnish
8 each of his or her employees . . . an itemized statement in writing showing (1) gross
9 wages earned, (2) total hours worked by the employee, except for any employee whose
10 compensation is solely based on a salary and who is exempt from payment of overtime
11 under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
12 Commission, . . . (8) the name and address of the legal entity that is the employer, and (9)
13 all applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate by the employee.”

15 70. Defendants have failed to record many of the items delineated in applicable
16 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
17 1174, including by virtue of the fact that each wage statement which failed to accurately
18 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-
19 provided meal and rest periods, or which failed to include compensation for all minimum wages
20 earned or overtime hours worked, was an inaccurate wage statement.

21 71. Moreover, during all relevant periods, Defendants violated California Labor Code
22 section 226 and 1174 by failing to provide accurate itemized wage statements that properly and
23 accurately itemized the actual hours worked, rates of pay including reporting time pay and rest
24 period premiums, and the employer's correct name.

25 72. Defendants have also omitted accurate itemizations of total hours worked,
26 applicable hourly rates, net pay, and gross pay from Plaintiff and the Aggrieved Employees'
27 wage statements. In addition, Defendants have failed to provide accurate itemized wage
28 statements as a consequence of the above-specified violations.

1 **Failure to Keep Accurate Payroll and Timekeeping Records**

2 73. IWC wage orders, Labor Code sections 226(a), 1174, and 1174.5 require that the
3 Defendant keep accurate payroll and timekeeping information.

4 74. By virtue of the above-specified violations, including the failure to record
5 reporting time, wages earned, proper rates of pay, and the failure to timely pay wages according
6 to requirements of Labor Code 204, Defendant failed to keep accurate timekeeping and wage
7 information and violated Labor Code sections 226(a), 1174, and 1174.5.

8 75. Defendant also failed to keep accurate payroll information as a consequence of
9 the above specified violations.

10 **Failure To Reimburse Necessary Expenses**

11 76. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 77. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
14 Employees for necessary expenditures incurred in direct consequence of the discharge of his or
15 her duties.

16 78. Plaintiff and the Aggrieved Employees were required to incur expenses in the
17 performance of their assigned job duties. For example, Plaintiff and the Aggrieved Employees
18 were required to incur numerous out of pocket expenses, including without limitation, for
19 writing utensils (like pens), note pads/paper, shoes, and uniform maintenance in direct
20 consequence of the discharge of their duties.

21 79. Upon information and belief, the Defendants did not reimburse Plaintiff or the
22 Aggrieved Employees for such expenses. This is a violation of Labor Code §2802.

23 **Penalties Pursuant to Labor Code Section 558**

24 80. This action is brought by Plaintiff and the Aggrieved Employees under Labor
25 Code §558, which provides,

26 “Any employer or other person acting on behalf of an employer who violates, or causes
27 to be violated, a section of this chapter or any provision regulating hours and days of
28 work in any order of the Industrial Welfare Commission shall be subject to a civil penalty

as follows:

“(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

“(2) 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.”

81. Plaintiff and the Aggrieved Employees were underpaid wages as a result of the violations of the California Labor Code and Wage Order 5-2001 as set forth herein.

82. As a direct and proximate result of Defendants’ conduct as alleged above, Plaintiff and the aggrieved employees are entitled to a civil penalty of fifty dollars (\$50) for the initial pay period, and one hundred dollars (\$100) for each subsequent pay period for which Defendants violated the California Labor Code and Wage Order 5-2001 as alleged herein.

FIRST CAUSE OF ACTION

THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.

83. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

84. Plaintiff timely provided written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific violations of the California Labor Code that Defendants have violated and continue to violate, including the facts and theories that supported each alleged violation. A true and correct copy of Plaintiff’s notice to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here.

85. The LWDA did not provide notice of intention to investigate West Coast Diner Management, Inc.’s alleged violations within 65 calendar days of the notice. Labor Code section 2699.3(a)(2)A). Thus, this action is timely.

86. Accordingly, Plaintiff has exhausted all administrative procedures required of them under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right

1 in bringing forward this cause of action.

2 87. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). He
3 brings this cause of action on his own behalf and the Aggrieved Employees as specified herein.

4 88. Plaintiff seeks to recover the PAGA civil penalties through a representative action
5 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
6 Cal.4th 969. Class certification of the PAGA claims is not required.

7 89. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiff seeks to recover
8 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
9 violations as set forth in this Complaint.

10 90. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seeks
11 penalties under Labor Code §2699, for the violations specified herein, including, without
12 limitation, the following:

- 13 a. Defendants' failure to pay reporting time wages in violation of the
14 requirement of Labor Code 1194, 1197, 1198, and Wage Order 5-
15 2001;
- 16 b. Defendants' failure to comply with the requirement of Labor Code
17 §216 to pay wages after demand was made by Plaintiff;
- 18 c. Defendants' failure to comply with the requirement of Labor Code
19 §§204 and 210 to pay, without condition and within the time set by
20 the applicable article, all wages, or parts thereof, which Defendants
21 conceded to be due during employment;
- 22 d. Defendants' failure to comply with the requirement of Labor Code
23 §225.5 to pay wages due;
- 24 e. Defendants' failure to comply with the requirement of Labor Code
25 §§201 and 202 to pay wages due to former employees;
- 26 f. Defendants' failure to comply with the requirement of Labor Code
27 §203 to pay waiting time penalties to former employees;
- 28 g. Defendants' failure to comply with the requirement of Labor Code

§226.7, 1198, and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;

h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;

i. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;

j. Defendants' failure to provide accurate compliant wage statements under Labor Code § 226;

k. Defendants' failure to reimburse necessary expenses, including shoes, pens, and expenses for uniforms, and to launder and maintain said uniforms, in violation of Labor Code section 2802.

91. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders.

92. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

l. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods.

m. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of

1 two hundred and fifty dollars (\$250) per aggrieved employee for
2 the initial pay period where a violation occurs and one thousand
3 dollars (\$1,000) per aggrieved employee for violations in
4 subsequent pay periods.

5 n. Pursuant to Labor Code § 558(a), “[a]ny employer or other person
6 acting on behalf of an employer who violates, or causes to be
7 violated, a section of this chapter or any provision regulating hours
8 and days of work in any order of the Industrial Welfare
9 Commission,” including Labor Code §§ 510 and 512, shall be
10 subject to a civil penalty, in addition to any other penalty provided
11 by law, of fifty dollars (\$50) for initial violations for each
12 underpaid employee for each pay period for which the employee
13 was underpaid and one hundred dollars (\$100) for each subsequent
14 violation for each underpaid employee for each pay period for
15 which the employee was underpaid.

16 o. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
17 1174(d), Defendants are subject to a civil penalty of five hundred
18 dollars (\$500).

19 p. Pursuant to Labor Code § 1197.1, an employer who pays or causes
20 to be paid to any employee a wage less than the minimum fixed by
21 an order of the commission, shall be subject to a civil penalty as
22 follows: for any initial violation that is intentionally committed,
23 one hundred dollars (\$100) for each underpaid employee for each
24 pay period for which the employee is underpaid; and for each
25 subsequent violation of the same offense, two hundred fifty
26 dollars (\$250) for each underpaid employee for each pay period for
27 which the employee is underpaid regardless of whether the initial
28 violation was intentionally committed.

93. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code for which no other civil penalty is specifically provided.

94. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees and costs.

95. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

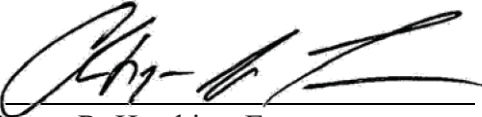
1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Respectfully submitted,

1 Dated: September 3, 2020

JAMES HAWKINS APLC

2
3 By:



James R. Hawkins, Esq.

Christina M. Lucio, Esq.

Attorneys for Plaintiff

JONATHAN FLORES, on behalf of himself and in his
representative capacity as private attorney general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

June 29, 2020

Via Online Filing (LWDA) and Certified Mail (Employer)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

West Coast Diner Management, Inc.
Agent for Service of Process: Anil Yadav
3550 Mowry Avenue #301
Fremont, CA 94538
Cert. No.: 7020 0640 0001 0089 8588

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Jonathan Flores, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant West Coast Diner Management, Inc., a California corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant West Coast Diner Management, Inc. via its agent for service of process.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

June 29, 2020

Page 2

Plaintiff alleges that Defendants committed the violations specified in the Complaint against both him and the group of aggrieved employees that he seeks to represent. The Aggrieved Employees are defined as: Any and all persons who are or were employed as non-exempt restaurant employees, however titled, working in Defendants' restaurant locations throughout the State of California during the liability period.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Christina M. Lucio', with a stylized flourish at the end.

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint