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11 RAINA CABRAL and VANESSA LOZANO

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 **(UNLIMITED JURISDICTION)**

16 RAINA CABRAL AND VANESSA
17 LOZANO, as “aggrieved employees” on behalf
18 of other similarly situated “aggrieved
19 employees” under the Labor Code Private
20 Attorney General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 DEL TACO LLC, a California limited liability
24 company; and DOES 1 through 50, inclusive,

25 *Defendant(s).*

Case No.: 20STCV36305

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE LABOR CODE
AND CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE
§§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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FILED
Superior Court of California
County of Los Angeles

12/01/2020

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Flores Deputy

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1 Plaintiffs RAINA CABRAL and VANESSA LOZANO (collectively, “Plaintiffs”), on
2 behalf of themselves, the State of California, and other Aggrieved Employees, complain and
3 allege as follows:

4 **I. INTRODUCTION**

5 1. Plaintiffs bring this representative action based on alleged violations of the
6 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
7 Wage Order”), against DEL TACO LLC, a California limited liability company; and DOES 1-
8 50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
10 them, the State of California, and other similarly situated aggrieved current and former employees
11 who worked in California as hourly employees, including but not limited to supervisors,
12 managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and
13 other employees of Defendants in comparable positions, at any time during the period of July 17,
14 2019 to the present, for civil penalties and other related relief. These claims are based on
15 Defendants’ alleged (1) failure to provide all rest breaks and meal periods; (2) failure to pay all
16 wages for all hours worked at the correct rates of pay; (3) failure to indemnify for necessary work-
17 related expenditures; (4) failure to pay all split shift premium wages; (5) unlawful deductions
18 from employees’ wages; (6) failure to timely pay wages during employment; (7) failure to provide
19 accurate written wage statements; (8) failure to timely pay wages upon termination of
20 employment; and (9) failure to pay reporting time pay. Accordingly, Plaintiffs now seek to
21 recover civil penalties and related relief through this representative action.

22 **II. JURISDICTION AND VENUE**

23 3. This Court has subject matter jurisdiction because the aggregate claims of
24 Plaintiffs and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in
25 controversy.

26 4. There is no basis for federal question subject matter jurisdiction in this case.
27 Specifically, Plaintiffs assert claims on behalf of themselves, the State of California, and
28 Aggrieved Employees that solely arise under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in Los Angeles County pursuant to California Code of Civil
Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles County because at least some



of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

III. THE PARTIES

7. Plaintiff RAINA CABRAL is a natural person and resident of the State of California.

8. Plaintiff VANESSA LOZANO is a natural person and resident of the State of California.

9. At all relevant times, Plaintiffs were “employees” within the meaning of Title 8 California Code of Regulations Section 11050 and “aggrieved employees” within the meaning of Labor Code Section 2699(c).

10. Defendant DEL TACO LLC is a limited liability company organized and existing under the laws of California based on Plaintiffs’ information and belief.

11. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but are informed and believe and thereon allege that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

A. THE AGGRIEVED EMPLOYEES

12. The “Aggrieved Employees” are all individuals Defendants employed in California and paid on an hourly basis, including but not limited to store managers, assistant general managers shift managers, front-of-house employees (including but not limited to cashiers), back-of-house employees (including but not limited to grill workers and taco bar workers), and other hourly employees in comparable positions, at any time during the period of July 17, 2019 and entry of judgment (the “PAGA Period”).

13. Plaintiffs are informed and believe and thereon allege that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

14. At all relevant times, in perpetrating the acts and omissions alleged herein,



1 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
2 of a practice which resulted in Defendants not paying Plaintiffs and other Aggrieved Employees
3 in accordance with applicable California labor laws as alleged herein.

4 15. Plaintiffs are informed and believe and thereon allege that each and every one of
5 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
6 each acting as agents and/or employees, and/or under the direction and control of each of the other
7 defendants, and that said acts and failures to act were within the course and scope of said agency,
8 employment, and/or direction and control.

9 **IV. FACTUAL ALLEGATIONS**

10 16. Defendants first hired Plaintiff Cabral on or about September 9, 2016 to work as a
11 non-exempt, hourly shift supervisor at their restaurant in Monrovia, California. Defendants
12 continuously employed Plaintiff Cabral in Monrovia and Pasadena, California, as a shift
13 supervisor and assistant general manager from the time of her hire until approximately September
14 2018, when Plaintiff Cabral began a leave of absence. In approximately April 2019, Plaintiff
15 Cabral recommenced her employment with Defendants as an hourly assistant general manager at
16 two of Defendants' restaurants in Pasadena and one of Defendants' restaurants in Monrovia,
17 California. Defendants continuously employed Plaintiff Cabral from that time until on or about
18 October 29, 2019, when her employment ended.

19 17. Defendants first hired Plaintiff Lozano in approximately November 2016 to work
20 as an hourly, non-exempt cashier at one of their restaurants in Perris, California. Defendants
21 continuously employed Plaintiff Lozano in Perris and Moreno Valley, California as a cashier, and
22 later as an hourly store manager, from the time of her hire until approximately 2018, when her
23 employment ended. In approximately August 2019, Plaintiff Lozano resumed employment with
24 Defendants as a cashier at one of their restaurants in Corona, California. Defendants continuously
25 employed Plaintiff Lozano as a cashier and hourly store manager from that time until or about
26 May 28, 2020, when her employment ended.

27 18. At all relevant times, Defendants paid Plaintiffs and the Aggrieved Employees at
28 an hourly rate of pay on a bi-weekly basis. At all relevant times, Plaintiffs and the Aggrieved
Employees were non-exempt employees entitled to the protections of both the Labor Code and
the Wage Order.

19. At all relevant times, Defendants failed to provide Plaintiffs and the Aggrieved



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1 Employees with a daily 30-minute off-duty meal period within the first five hours of work.
2 Defendants required Plaintiffs and the Aggrieved Employees to remain inside their restaurants
3 during their meal and rest breaks. Defendants further required Plaintiffs and the Aggrieved
4 Employees to sign on-duty meal period agreements even though the nature of their work did not
5 prevent them from taking an off-duty meal period. Defendants also failed to authorize and permit
6 Plaintiffs and the Aggrieved Employees to take a ten-minute, paid, duty-free ten-minute rest break
7 every four hours or major fraction thereof. On Plaintiffs' information and belief, Defendants did
8 not seek an exemption from the rest period protections of the Wage Order from the California
9 Division of Labor Standards Enforcement. Defendants failed to pay premium wages to Plaintiffs
10 and the Aggrieved Employees for days on which Defendants failed to provide them with all
timely, off-duty meal and rest periods.

11 20. At all relevant times, Defendants required Plaintiffs and the Aggrieved Employees
12 to drive their personal vehicles from their assigned Del Taco LLC restaurant to other Del Taco
13 LLC restaurants in California, as well as to the bank. Defendants failed to reimburse Plaintiffs
14 and the Aggrieved Employees for such mileage.

15 21. At all relevant times, Defendants required Plaintiffs and the Aggrieved Employees
16 to perform work while clocked out. At relevant times, Defendants required Plaintiffs and the
17 Aggrieved Employees to attend meetings at Defendants' restaurants, though it did not pay them
18 for the time spent. Further, as discussed above, Defendants regularly required Plaintiffs and the
19 Aggrieved Employees to travel between their regular Del Taco LLC restaurant and others in the
20 area to transport supplies while off-the-clock before and after their scheduled shifts. Further,
21 Defendants required Plaintiffs and the Aggrieved Employees to travel to the bank to make
22 deposits while clocked out for work. Defendants failed to compensate Plaintiffs and the
23 Aggrieved Employees for the time they spent on these activities.

24 22. At all relevant times, Defendants assigned Plaintiffs and the Aggrieved Employees
25 to work "split shifts." For instance, Defendants scheduled them to work a morning shift, followed
26 by a night shift, in the same calendar day. However, on such occasions, Defendants failed to pay
27 Plaintiffs and the Aggrieved Employees split shift premiums as required by the Wage Order.

28 23. At relevant times, Defendants required Plaintiffs and the Aggrieved Employees to
report to work for shifts of at least four hours in length, only to send them home without any pay
for the day.



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24. At all relevant times, Defendants issued the Aggrieved Employees their wages via bank pay cards in lieu of paychecks. The Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards.

25. For the reasons stated herein, Plaintiffs allege that as a result of Defendants' unlawful practice and policies, Plaintiffs and the Aggrieved Employees were:

- A. Not provided with all off-duty meal periods as required by law;
- B. Not provided with all rest break periods as required by law;
- C. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid for all hours worked at the correct rates of pay, including, but not limited to, regular and overtime pay due to off-the-clock work;
- F. Not paid split shift premiums as required by the Wage Order;
- G. Not paid all wages as a result Defendants' practice of unlawfully deducting wages to cover fees charged to the Aggrieved Employees for withdrawing their wages from pay cards;
- H. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- I. Not provided with accurate and complete wage statements; and
- J. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

V. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, et seq.)

(By Plaintiffs, on behalf of themselves and the other Aggrieved Employees, against all Defendants)

26. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

27. At all relevant times, Plaintiffs and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

///



1 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

2 28. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor
4 fixed by the commission shall be the maximum hours of work and
5 the standard conditions of labor for employees. The employment
6 of any employee for longer hours than those fixed by the order or
7 under conditions of labor prohibited by the order is unlawful.

8 29. In relevant part, California Labor Code § 512 states:

9 An employer shall not employ an employee for a work period of
10 more than five hours per day without providing the employee with
11 a meal period of not less than 30 minutes, except that if the total
12 work period per day of the employee is no more than six hours, the
13 meal period may be waived by mutual consent of both the
14 employer and employee.

15 An employer shall not employ an employee for a work period of
16 more than 10 hours per day without providing the employee with
17 a second meal period of not less than 30 minutes, except that if the
18 total hours worked is no more than 12 hours, the second meal
19 period may be waived by mutual consent of the employer and the
20 employee only if the first meal period was not waived.

21 30. In relevant part, Section 12 of the Wage Order states:

22 **Rest Periods**

23 (A) “Every employer shall authorize and permit all employees
24 to take rest periods, which insofar as practicable shall be in the
25 middle of each work period. The authorized rest period time shall
26 be based on the total hours worked daily at the rate of ten (10)
27 minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.”

(B) If 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 work day that
the rest period is not provided.”

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1 31. In relevant part, Section 11 of the Wage Order states:

2 **Meal Periods**

3 (A) “No employer shall employ any person for a work period
4 of more than five (5) hours without a meal period of not less than
5 30 minutes, except that when a work period of not more than six
6 (6) hours will complete the day’s work the meal period may be
7 waived by mutual consent of the employee and the employer.
8 Unless the employee is relieved of all duty during a 30 minute meal
9 period, the meal period shall be considered an ‘on duty’ meal
10 period and counted as time worked. An ‘on duty’ meal period shall
11 be permitted only when the nature of the work prevents an
12 employee from being relieved of all duty and when by written
13 agreement between the parties an on-the-job paid meal period is
14 agreed to. The written agreement shall state that the employee
15 may, in writing, revoke the agreement at any time.”

16 (B) If an employer fails to provide an employee a meal period
17 in accordance with the applicable provisions of this Order, the
18 employer shall pay the employee one (1) hour of pay at the
19 employee’s regular rate of compensation for each work day that
20 the meal period is not provided.”

21 32. In relevant part, California Labor Code § 226.7 states:

22 (b) An employer shall not require an employee to work during
23 a meal or rest period mandated pursuant to an applicable statute,
24 or applicable regulation, standard, or order of the Industrial
25 Welfare Commission, the Occupational Safety and Health
26 Standards Board, or the Division of Occupational Safety and
27 Health.

28 (c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard,
or order of the Industrial Welfare Commission, the Occupational
Safety and Health Standards Board, or the Division of
Occupational Safety and Health, the employer shall pay the
employee one additional hour of pay at the employee’s regular rate
of compensation for each work day that the meal or rest period is
not provided.

33. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
day they worked five or more hours. Pursuant to California Labor Code § 512, they were also



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entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

34. Pursuant to the Wage Order, Plaintiffs and the Aggrieved Employees were entitled to be provided with net duty-free rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

35. Defendants intentionally failed to provide Plaintiffs and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Plaintiffs are informed and believe and thereon allege that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.

B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

36. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]”

37. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

38. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

39. In relevant part, California Labor Code § 510 states,

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.

40. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years



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1 of age who are not required by law to attend school and are not
2 otherwise prohibited by law from engaging in the subject work.
3 Such employees shall not be employed more than eight (8) hours
4 in any workday or more than 40 hours in any workweek unless the
5 employee receives one and one-half (1 1/2) times such employee's
6 regular rate of pay for all hours worked over 40 hours in the
7 workweek. Eight (8) hours of labor constitutes a day's work.
8 Employment beyond eight (8) hours in any workday or more than
9 six (6) days in any workweek is permissible provided the employee
10 is compensated for such overtime at not less than:

11 (a) One and one-half (1 1/2) times the employee's regular rate
12 of pay for all hours worked in excess of eight (8) hours up to and
13 including 12 hours in any workday, and for the first eight (8) hours
14 worked on the seventh (7th) consecutive day of work in a
15 workweek; and

16 (b) Double the employee's regular rate of pay for all hours
17 worked in excess of 12 hours in any workday and for all hours
18 worked in excess of eight (8) hours on the seventh (7th)
19 consecutive day of work in a workweek.

20 (c) The overtime rate of compensation required to be paid to a
21 nonexempt full-time salaried employee shall be computed by using
22 the employee's regular hourly salary as one-fortieth (1/40) of the
23 employee's weekly salary.

24 41. Section 4 of the Wage Order requires an employer to pay non-exempt employees
25 at least the minimum wage set forth therein for all hours worked, which consist of all hour that
26 an employer has actual or constructive knowledge that employees are working.

27 42. Labor Code section 510 states:

28 Eight 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. Nothing in this section requires an employer to
combine more than one rate of overtime compensation in order to
calculate the amount to be paid to an employee for any hour of



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overtime work.

43. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

44. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

45. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

46. In conjunction, these provisions of the California Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

47. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied centrally devised policies and practices to them and the Aggrieved Employees with respect to working conditions and compensation arrangements.

48. At all relevant times during the applicable limitations period, Defendants paid Plaintiffs and the Aggrieved Employees at an hourly rate on a bi-weekly basis.

49. At all relevant times during the applicable limitations period, Defendants failed to pay Plaintiffs and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock.

50. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate the Aggrieved Employees for all hours worked, including, but not limited to, regular and overtime hours at the correct rates of pay.

C. FAILURE TO PAY SPLIT SHIFT PREMIUM WAGES

51. Wage Order § 2(Q) defines a "Shift" as "designated hours of work by an employee, with a designated beginning time and quitting time." A "Split shift" is defined by §



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1 2(R) as a “work schedule which is interrupted by non-paid non-working periods established by
2 the employer, other than bona fide rest or meal periods.”

3 52. Wage Order 9 § 4(C) pertaining to “Minimum Wages” states: “When an employee
4 works a split shift, one (1) hour’s pay at the minimum wages shall be paid in addition to the
5 minimum wage for that workday, except when the employee resides at the place of employment.”

6 53. Under Labor Code § 1197, “The minimum wages for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than
8 the minimum so fixed is unlawful.”

9 54. Defendants regularly directed Plaintiffs and the Aggrieved Employees to work
10 split shifts. However, Defendants intentionally failed to pay them the equivalent of a sum greater
11 than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so
12 doing, defendants violated Labor Code §§ 1197 and 1198.

13 **D. FAILURE TO PAY REPORTING TIME PAY**

14 55. Under Section 5 of the Wage Order,

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

20 56. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor fixed by the
22 commission shall be the maximum hours of work and the standard conditions of
23 labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.

25 57. As described above, at all relevant times, Defendants required Plaintiffs and the
26 Aggrieved Employees to report for work for shifts of at least four hours in length only to send
27 them home without any pay for the day. On such occasions, Defendants failed to pay Plaintiffs
28 and the Aggrieved Employees the “reporting time” wages to which they were entitled pursuant to
Labor Code § 1198 and the Wage Order.

58. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants’
failure to pay Plaintiffs and the Aggrieved Employees reporting time pay as required under



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California law.

E. UNLAWFUL DISCOUNT OF WAGES

59. In relevant part, California Labor Code § 212 states,

(a) No person, agent, or officer thereof, shall issue in payment of wages due, or the become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designated to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07.

60. In addition, a pay card system must also comply with the requirement of Labor



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Code § 213(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union “with a place of business in [California].” further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

61. At all relevant times, Defendants required the Aggrieved Employees to use a pay card to receive their wages. At all relevant times, the Aggrieved Employees incurred various fee associated with using and/or cashing said pay cards. As a result, Defendants’ pay card system violated Labor Code § 212.

F. FAILURE TO INDEMNIFY

62. In pertinent part, California Labor Code section 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

63. In relevant part Section 9 of the Wage Order states,

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade.

64. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

65. At all relevant times during the applicable limitations period, Defendants required Plaintiffs and the Aggrieved Employees to travel between company locations on company business, and to complete bank deposits, as a necessary condition of their employment. Defendants failed to indemnify Plaintiffs and the Aggrieved Employees for their mileage-related expenses both during their employment and after such employment ended.

G. INCOMPLETE AND INACCURATE WAGE STATEMENTS

66. Pursuant to California Labor Code § 226(a), Plaintiffs and the Aggrieved Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

67. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury



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1 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
2 if the employer fails to provide accurate and complete information as required by California
3 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
4 statement alone one or more of the following:

5 A. The amount of the gross wages or net wages paid to the employee during
6 the pay period or any of the other information required to be provided on the itemized wage
7 statement pursuant to California Labor Code § 226(a);

8 B. Which deductions the employer made from gross wages to determine the
9 net wages paid to the employee during the pay period;

10 C. The name and address of the employer and, if the employer is a farm labor
11 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
12 and address of the legal entity that secured the services of the employer during the pay period;

13 D. The name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number; and

15 E. The number of piece-rate units earned and the piece rate.

16 68. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
17 means a reasonable person would be able to readily ascertain the information without reference
18 to other documents or information.

19 69. As alleged herein, Defendants failed to pay Plaintiffs and the Aggrieved
20 Employees all wages owed, including, but not limited to, all regular and overtime wages owed
21 at the correct rates for work performed while off-the-clock. As a result, Defendants have failed
22 to properly and accurately itemize each employee’s gross wages earned, net wages earned, the
23 total hours worked, the corresponding number of hours worked at each rate by the employee and
24 other requirements of California Labor Code § 226. As a result, Defendants have violated
25 California Labor Code § 226.

26 70. Defendants’ failure to provide Plaintiffs and the Aggrieved Employees with
27 accurate wage statements was knowing and intentional. Defendants had the ability to provide
28 Plaintiffs and the Aggrieved Employees with accurate wage statements but intentionally provided
29 wage statements that Defendants knew were not accurate.

30 71. As a result of being provided with inaccurate wage statements by Defendants,
31 Plaintiffs and the Aggrieved Employees have suffered an injury. Their legal rights to receive



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1 accurate wage statements were violated and they were misled about the amount of wages they
2 had actually earned and were owed. In addition, the absence of accurate information on their
3 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
4 required discovery and mathematical computations to determine the amounts of wages owed, has
5 caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to
6 the submission of inaccurate information about wages to state and federal government agencies.
7 Further, Plaintiffs and the Aggrieved Employees were not able to ascertain from the wage
8 statements whether Defendants complied with their obligations under California Labor Code §
226(a).

9 **H. UNTIMELY WAGES DURING EMPLOYMENT**

10 72. Labor Code § 204 states

11 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
12 204.1, or 204.2, earned by any person in any employment are due
13 and payable twice during each calendar month, on days designated
14 in advance by the employer as the regular paydays. Labor
15 performed between the 1st and 15th days, inclusive, of any calendar
16 month shall be paid for between the 16th and the 26th day of the
month during which the labor was performed, and labor performed
between the 16th and the last day, inclusive, of any calendar month,
shall be paid for between the 1st and 10th day of the following
month. ...

17 (b) (1) Notwithstanding any other provision of this section, all
18 wages earned for labor in excess of the normal work period shall
19 be paid no later than the payday for the next regular payroll period.

20 (2) An employer is in compliance with the requirements of
21 subdivision (a) of Section 226 relating to total hours worked by the
22 employee, if hours worked in excess of the normal work period
23 during the current pay period are itemized as corrections on the
24 paystub for the next regular pay period. Any corrections set out in
a subsequently issued paystub shall state the inclusive dates of the
pay period for which the employer is correcting its initial report of
hours worked.

25 (c) However, when employees are covered by a collective bargaining
26 agreement that provides different pay arrangements, those
arrangements shall apply to the covered employees.

27 (d) The requirements of this section shall be deemed satisfied by the
28 payment of wages for weekly, biweekly, or semimonthly payroll if



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the wages are paid not more than seven calendar days following the close of the payroll period.

73. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiffs on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, all regular and overtime wages for work performed while off-the-clock, and all premium wages for split shifts that were not provided. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

I. UNTIMELY FINAL WAGES

74. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

75. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

76. By failing to pay Plaintiffs and the Aggrieved Employees and all regular and overtime wages for work Plaintiffs and the Aggrieved Employees performed while off-the-clock, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

77. Plaintiffs are informed and believe that Defendants' failures to timely pay Plaintiffs and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

J. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

78. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing



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the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

79. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

80. Section 7 of the Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

1. Full name, home address, occupation, and social security number.
2. Birth date, if under 18 years, and designation as a minor.
3. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
4. Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
5. Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

81. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

82. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, the total premium wages earned for working split shifts, and records pertaining to all unpaid hours worked by Plaintiffs and the



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Aggrieved Employees.

K. CIVIL PENALTIES SOUGHT

83. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

84. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

85. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code § 212, one hundred dollars (\$100) for each Aggrieved Employee for each initial violation and \$200 for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212 (penalty amounts established by California Labor Code § 225.5).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars



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1 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
3 (regardless of whether the initial violations were intentionally committed) (penalty amounts
4 established by California Labor Code § 1197.1).

5 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
6 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
7 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
8 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

9 **L. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

10 86. Plaintiffs have complied with the procedures for bringing suit specified in
11 California Labor Code § 2699.3. By letter dated July 17, 2020, Plaintiffs Cabral and Lozano each
12 gave written notice by certified mail to the Labor and Workforce Development Agency
13 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
14 have been violated, including the facts and theories to support the alleged violations. A true and
15 correct copy of Plaintiff Cabral’s letter to the LWDA, dated July 17, 2020, is attached hereto as
16 **Exhibit A**. A true and correct copy of Plaintiff Lozano’s letter to the LWDA, dated July 17,
2020, is attached hereto as **Exhibit B**. By letters dated September 22, 2020, Plaintiffs Cabral and
17 Lozano each gave supplemental written notice by certified mail to the LWDA and Defendants of
18 additional provisions of the California Labor Code alleged to have been violated, including the
19 facts and theories to support the alleged violations. A true and correct copy of Plaintiff Cabral’s
20 supplemental letter to the LWDA, dated September 22, 2020, is attached hereto as **Exhibit C**. A
21 true and correct copy of Plaintiff Lozano’s supplemental letter to the LWDA, dated September
22 22, 2020, is attached hereto as **Exhibit D**. The LWDA has not responded to Plaintiffs’ letters.

23 87. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
24 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
25 connection with their claims for civil penalties.

26 **VI. PRAYER FOR RELIEF**

27 88. WHEREFORE, Plaintiffs, on behalf of themselves and the Aggrieved Employees,
28 pray for relief and judgment against Defendants as follows:

A. Civil penalties;



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- 1 B. Costs of suit;
2 C. Reasonable attorneys' fees; and
3 D. Such other relief as the Court deems just and proper.

4 **VII. DEMAND FOR JURY TRIAL**

5 Plaintiffs, on behalf of themselves and all other Aggrieved Employees, hereby demand a
6 jury trial on all issues so triable.

7 Respectfully submitted,

8 THE SPIVAK LAW FIRM

9 Dated: December 1, 2020

10 By: 

11 DAVID SPIVAK
12 CARL KAPLAN, Attorneys for Plaintiff,
13 RAINA CABRAL, VANESSA LOZANO,
14 and the Aggrieved Employees
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EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

July 17, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Raina Cabral / Del Taco, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Raina Cabral (hereafter "Cabral") provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and in other comparable positions (hereafter "Aggrieved Employees") by Del Taco, LLC, a California limited liability company (hereafter "Del Taco"), of violations of Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Cabral and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

On or about September 9, 2016, Del Taco first employed Cabral to work in California as a non-exempt, hourly shift supervisor at its restaurant in Monrovia, California. Del Taco continuously employed Cabral in Monrovia and Pasadena, California as a shift supervisor and assistant general manager from the time of her hire until approximately September 2018, when Cabral went on maternity leave. In approximately April 2019, Cabral recommenced her employment as an assistant general manager with Del Taco in Pasadena, California. Del Taco continuously employed Cabral from that time until on or about October 29, 2019, when her employment ended.

At all relevant times, Del Taco employed Cabral and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Del Taco classified Cabral and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Del Taco failed to provide Cabral and the Aggrieved Employees with a daily 30-minute off duty meal period within the first five hours of work. Del Taco required Cabral and the Aggrieved Employees to remain inside its restaurants during their meal and rest breaks. Del Taco required Cabral and the Aggrieved Employees to sign on-duty meal period agreements even though the nature of their work did not prevent them from taking an off-duty meal period. Del Taco further failed to authorize and permit Cabral and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Del Taco seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Del Taco failed to pay premium wages for days on which it failed to provide Cabral and the Aggrieved Employees with all timely, off duty meal and rest periods.

At all relevant times, Del Taco required Cabral and the Aggrieved Employees to drive their personal vehicles from their assigned Del Taco restaurant to other Del Taco restaurants in California, as well as to the bank. Del Taco failed

to reimburse Cabral and the Aggrieved Employees for such mileage. Further, at all relevant times, Del Taco required Cabral and the Aggrieved Employees to incur cleaning costs associated with maintaining their work uniforms and failed to reimburse them for these costs.

At all relevant times, Del Taco required Cabral and the Aggrieved Employees to perform work while clocked out. At relevant times, Del Taco required Cabral and the Aggrieved Employees to attend meetings and interviews at Del Taco restaurants though it did not pay them for the time spent. Further, as discussed above, Del Taco regularly required Cabral and the Aggrieved Employees to travel between their regular Del Taco restaurant and others in the area to transport supplies while off-the-clock before and after their scheduled shifts. Further, Del Taco required Cabral and the Aggrieved Employees to travel to the bank to make deposits while clocked out for work. Del Taco failed to compensate Cabral and the Aggrieved Employees the time they spent on these activities.

At all relevant times, Del Taco assigned Cabral and the Aggrieved Employees to work “split shifts.” For instance, Del Taco scheduled them to work a morning shift, followed by a night shift, in the same calendar day. However, Del Taco failed to pay Cabral and the Aggrieved Employees a split shift premium as required by the Wage Order.

At all relevant times, Del Taco issued the Aggrieved Employees their wages via bank pay cards in lieu of paychecks. The Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards.

For the reasons stated herein, Cabral alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Del Taco failed to provide Cabral and the Aggrieved Employees with all meal periods as required by law;

- b) Del Taco failed to provide Cabral and the Aggrieved Employees with all rest periods as required by law;
- c) Del Taco failed to compensate Cabral and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more meal periods in a workday;
- d) Del Taco failed to compensate Cabral and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more rest periods in a workday;
- e) Del Taco failed to pay Cabral and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular and overtime pay due to off-the-clock work;
- f) Del Taco failed to indemnify Cabral and the Aggrieved Employees for all business expenses;
- g) Del Taco failed to pay Cabral and the Aggrieved Employees split shift premiums as required by the Wage Order;
- h) Del Taco unlawfully deducted wages from the Aggrieved Employees to cover fees charged for withdrawing their wages from pay cards;
- i) Del Taco failed to timely pay Cabral and the Aggrieved Employees all earned and unpaid wages during employment;
- j) Del Taco failed to provide Cabral and the Aggrieved Employees with accurate and complete wage statements; and
- k) Del Taco failed to timely pay Cabral and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Cabral now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Del Taco's violations of the California Labor Code.

The Wage Order

"Wage Order 5" or "The Wage Order" applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services, and includes but is not limited to the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, Del Taco employed Cabral and the Aggrieved Employees as hourly, non-exempt supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and comparable positions. Accordingly Cabral and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 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.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all 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 number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If 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.

In relevant part, California Labor Code § 512 states:

An 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, except that if the total work period per day of the employee is no more than six

hours, the meal period may be waived by mutual consent of both the employer and employee.

An 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No 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.

...

(D) If 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.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.

Del Taco intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Cabral and the Aggrieved Employees as required by law. In failing to do so, Del Taco violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Cabral seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

- (3) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
- (4) \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
- (5) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages Earned for All Hours Worked

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The 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."

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Del Taco knowingly failed to pay Cabral and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock. Accordingly, Cabral seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Indemnify
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802 states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, Del Taco required Cabral and the Aggrieved Employees to travel between company locations on company business, and to complete bank deposits, as a necessary condition of their employment. Del Taco failed to indemnify Cabral and the Aggrieved Employees for their mileage related expenses both during their employment and after such employment ended. Del Taco further required Cabral and the Aggrieved Employees to incur expenses in connection with uniform maintenance and failed to reimburse them for these expenses.

Accordingly, Cabral seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).d

Failure to Pay Split Shift Premiums
(Lab. Code §§ 1197, 1198)

Wage Order § 2 (Q) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (R) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order 9 § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “The 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.”

Del Taco directed Cabral and the Aggrieved Employees to regularly work split shifts. However, Del Taco intentionally failed to pay them the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so doing, Del Taco violated Labor Code §§ 1197 and 1198.

Unlawful Discount of Wages
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

(a) No person, agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designated to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07. In addition, a pay card system must also comply with the requirement of Labor Code § 213(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully

payable, on demand and without discount, at some established business in California.

At all relevant times, Del Taco required the Aggrieved Employees to use a pay card to receive their wages. At all relevant times, the Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards. As a result, Del Taco's pay card system violated Labor Code § 212.

Accordingly, Cabral now seeks civil penalties on behalf of the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 212, and \$200 for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212 (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;

- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; 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.

At relevant times during the applicable limitations period, Del Taco violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Del Taco failed to state in the wage statements it issued to Cabral and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock.

Accordingly, Cabral now seeks civil penalties for the Labor Code violations that Del Taco has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed,

and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Del Taco's failure to pay Cabral and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal periods within the time periods set by California Labor Code § 204, Del Taco failed to timely pay all wages due during employment. Accordingly, Cabral seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not

less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Del Taco has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Cabral and the Aggrieved Employees. Accordingly, Cabral seeks civil penalties from Del Taco on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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 therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Cabral and the Aggrieved Employees as set forth above, Del Taco is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Cabral seeks civil penalties from Del Taco as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Raina Cabral
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco, LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064

EXHIBIT B



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

July 17, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Vanessa Lozano / Del Taco LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Vanessa Lozano (hereafter "Lozano") provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and in other comparable positions (hereafter "Aggrieved Employees") by Del Taco LLC, a California limited liability company (hereafter "Del Taco"), of violations of Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Lozano and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

In approximately November 2016, Del Taco first employed Lozano to work in California at its restaurant in Perris, California as a non-exempt, hourly cashier. Del Taco continuously employed Lozano in Perris and Moreno Valley, California as a cashier, and later store manager, from the time of her hire until approximately 2018, when her employment ended. In approximately August 2019, Lozano resumed employment as a cashier with Del Taco in Corona, California. Del Taco continuously employed Lozano as a cashier and store manager from that time until on or about May 28, 2020, when her employment ended.

At all relevant times, Del Taco employed Lozano and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Del Taco classified Lozano and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Del Taco failed to provide Lozano and the Aggrieved Employees with a daily 30-minute off-duty meal period within the first five hours of work. Del Taco required Lozano and the Aggrieved Employees to remain inside its restaurants during their meal and rest breaks. Del Taco further required Lozano and the Aggrieved Employees to sign on-duty meal period agreements even though the nature of their work did not prevent them from taking an off-duty meal period. Del Taco also failed to authorize and permit Lozano and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Del Taco seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Del Taco failed to pay premium wages for days on which it failed to provide Lozano and the Aggrieved Employees with all timely, off duty meal and rest periods.

At all relevant times, Del Taco required Lozano and the Aggrieved Employees to drive their personal vehicles from their assigned Del Taco restaurant to other Del Taco restaurants in California, as well as to the bank. Del Taco failed

to reimburse Lozano and the Aggrieved Employees for such mileage. Further, at all relevant times, Del Taco required Lozano and the Aggrieved Employees to incur costs associated with cleaning their work uniforms that displayed the Del Taco logo and failed to reimburse them for such costs.

At all relevant times, Del Taco required Lozano and the Aggrieved Employees to perform work while clocked out. Del Taco required Lozano and the Aggrieved Employees to attend meetings at Del Taco restaurants though it did not pay them for the time spent. Further, as discussed above, Del Taco regularly required Lozano and the Aggrieved Employees to travel between their regular Del Taco restaurant and others in the area to transport supplies while off-the-clock before and after their scheduled shifts. Additionally, Del Taco required Lozano and the Aggrieved Employees to travel to the bank to make deposits while clocked out for work. Del Taco failed to compensate Lozano and the Aggrieved Employees for the time they spent on these activities.

At all relevant times, Del Taco assigned Lozano and the Aggrieved Employees to work “split shifts.” For instance, Del Taco scheduled them to work a morning shift, followed by a night shift, in the same calendar day. However, on such occasions, Del Taco failed to pay Lozano and the Aggrieved Employees a split shift premium as required by the Wage Order.

At all relevant times, Del Taco issued the Aggrieved Employees their wages via bank pay cards in lieu of paychecks. The Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards.

For the reasons stated herein, Lozano alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Del Taco failed to provide Lozano and the Aggrieved Employees with all meal periods as required by law;
- b) Del Taco failed to provide Lozano and the Aggrieved Employees with all rest periods as required by law;

- c) Del Taco failed to compensate Lozano and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more off-duty meal periods in a workday;
- d) Del Taco failed to compensate Lozano and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more rest periods in a workday;
- e) Del Taco failed to pay Lozano and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular and overtime pay due to off-the-clock work;
- f) Del Taco failed to indemnify Lozano and the Aggrieved Employees for all business expenses;
- g) Del Taco failed to pay Lozano and the Aggrieved Employees split shift premiums as required by the Wage Order;
- h) Del Taco unlawfully deducted wages from the Aggrieved Employees to cover fees charged for withdrawing their wages from pay cards;
- i) Del Taco failed to timely pay Lozano and the Aggrieved Employees all earned and unpaid wages during employment;
- j) Del Taco failed to provide Lozano and the Aggrieved Employees with accurate and complete wage statements; and
- k) Del Taco failed to timely pay Lozano and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Lozano now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Del Taco's violations of the California Labor Code.

The Wage Order

"Wage Order 5" or "The Wage Order" applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services, and includes but is not limited to the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, Del Taco employed Lozano and the Aggrieved Employees as hourly, non-exempt supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and comparable positions. Accordingly Lozano and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 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.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all 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 number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If 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.

In relevant part, California Labor Code § 512 states:

An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No 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.

...

(D) If 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.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.

Del Taco intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Lozano and the Aggrieved Employees as required by law. In failing to do so, Del Taco violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Lozano seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

- (3) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
- (4) \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
- (5) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages Earned for All Hours Worked

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The 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.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12)

hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Del Taco knowingly failed to pay Lozano and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock. Accordingly, Lozano seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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Failure to Indemnify
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802 states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, Del Taco required Lozano and the Aggrieved Employees to travel between company locations on company business, and to complete bank deposits, as a necessary condition of their employment. Del Taco failed to indemnify Lozano and the Aggrieved Employees for their mileage related expenses both during their employment and after such employment ended. Del Taco further required Lozano and the Aggrieved Employees to incur expenses in connection with uniform maintenance and failed to reimburse them for these expenses.

Accordingly, Lozano seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay Split Shift Premium Wages
(Lab. Code §§ 1197, 1198)

Wage Order § 2 (Q) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (R) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order 9 § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be

paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “The 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.”

Del Taco directed Lozano and the Aggrieved Employees to regularly work split shifts. However, Del Taco intentionally failed to pay them the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so doing, Del Taco violated Labor Code §§ 1197 and 1198.

Unlawful Discount of Wages
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

- (a) No person, agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:
 - (1) Any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
 - (2) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designated to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07. In addition, a pay card system must also comply with the requirement of Labor Code § 213(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

At all relevant times, Del Taco required the Aggrieved Employees to use a pay card to receive their wages. At all relevant times, the Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards. As a result, Del Taco's pay card system violated Labor Code § 212.

Accordingly, Lozano now seeks civil penalties on behalf of the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 212, and \$200 for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212 (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; 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.

At relevant times during the applicable limitations period, Del Taco violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Del Taco failed to state in the wage statements it issued to Lozano and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock and on-the-clock.

Accordingly, Lozano now seeks civil penalties for the Labor Code violations that Del Taco has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Del Taco's failure to pay Lozano and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal and rest periods within the time periods set by California Labor Code § 204, Del Taco failed to timely pay all wages due during employment. Accordingly, Lozano seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from

maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Del Taco has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely off-duty meal and rest periods, and records pertaining to all unpaid hours worked by Lozano and the Aggrieved Employees. Accordingly, Lozano seeks civil penalties from Del Taco on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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 therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Lozano and the Aggrieved Employees as set forth above, Del Taco is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Lozano seeks civil penalties from Del Taco as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay

period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Vanessa Lozano
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
asatenberg@manatt.com

EXHIBIT C



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

September 22, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Raina Cabral / Del Taco LLC*

To Whom It May Concern:

This is a supplemental notice of Labor Code violations regarding the matter of *Raina Cabral / Del Taco LLC*. The original notice dated July 17, 2020 is enclosed herewith.

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Raina Cabral (hereafter “Cabral”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to front of house workers (including but not limited to cashiers), and back of house workers (including but not limited to grill workers and taco bar workers) and in other comparable positions (hereafter “Aggrieved Employees”) by Del Taco LLC, a California limited liability company (hereafter “Del Taco”), of violations of Labor Code § 1198.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Cabral and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

At relevant times, Del Taco frequently required Cabral and the Aggrieved Employees to report to work for shifts of at least four hours in length, only to send them home without any pay for the day.

Failure to Pay Reporting Time Pay **(Labor Code § 1198)**

Under Section 5 of the Wage Order,

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.

In relevant part, California Labor Code § 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.

As described above, at all relevant times, Del Taco required Cabral and the Aggrieved Employees to report to work for shifts of at least four hours in length only to send them home without any pay for the day. On such occasions, Del Taco failed to pay Cabral and Aggrieved Employees the "reporting time" wages to which they were entitled pursuant to Labor Code § 1198 and the Wage Order.

Accordingly, Cabral seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak, Esq.

david@spivaklaw.com

cc: Raina Cabral
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

July 17, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Raina Cabral / Del Taco, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Raina Cabral (hereafter "Cabral") provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and in other comparable positions (hereafter "Aggrieved Employees") by Del Taco, LLC, a California limited liability company (hereafter "Del Taco"), of violations of Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Cabral and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

On or about September 9, 2016, Del Taco first employed Cabral to work in California as a non-exempt, hourly shift supervisor at its restaurant in Monrovia, California. Del Taco continuously employed Cabral in Monrovia and Pasadena, California as a shift supervisor and assistant general manager from the time of her hire until approximately September 2018, when Cabral went on maternity leave. In approximately April 2019, Cabral recommenced her employment as an assistant general manager with Del Taco in Pasadena, California. Del Taco continuously employed Cabral from that time until on or about October 29, 2019, when her employment ended.

At all relevant times, Del Taco employed Cabral and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Del Taco classified Cabral and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Del Taco failed to provide Cabral and the Aggrieved Employees with a daily 30-minute off duty meal period within the first five hours of work. Del Taco required Cabral and the Aggrieved Employees to remain inside its restaurants during their meal and rest breaks. Del Taco required Cabral and the Aggrieved Employees to sign on-duty meal period agreements even though the nature of their work did not prevent them from taking an off-duty meal period. Del Taco further failed to authorize and permit Cabral and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Del Taco seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Del Taco failed to pay premium wages for days on which it failed to provide Cabral and the Aggrieved Employees with all timely, off duty meal and rest periods.

At all relevant times, Del Taco required Cabral and the Aggrieved Employees to drive their personal vehicles from their assigned Del Taco restaurant to other Del Taco restaurants in California, as well as to the bank. Del Taco failed

to reimburse Cabral and the Aggrieved Employees for such mileage. Further, at all relevant times, Del Taco required Cabral and the Aggrieved Employees to incur cleaning costs associated with maintaining their work uniforms and failed to reimburse them for these costs.

At all relevant times, Del Taco required Cabral and the Aggrieved Employees to perform work while clocked out. At relevant times, Del Taco required Cabral and the Aggrieved Employees to attend meetings and interviews at Del Taco restaurants though it did not pay them for the time spent. Further, as discussed above, Del Taco regularly required Cabral and the Aggrieved Employees to travel between their regular Del Taco restaurant and others in the area to transport supplies while off-the-clock before and after their scheduled shifts. Further, Del Taco required Cabral and the Aggrieved Employees to travel to the bank to make deposits while clocked out for work. Del Taco failed to compensate Cabral and the Aggrieved Employees the time they spent on these activities.

At all relevant times, Del Taco assigned Cabral and the Aggrieved Employees to work “split shifts.” For instance, Del Taco scheduled them to work a morning shift, followed by a night shift, in the same calendar day. However, Del Taco failed to pay Cabral and the Aggrieved Employees a split shift premium as required by the Wage Order.

At all relevant times, Del Taco issued the Aggrieved Employees their wages via bank pay cards in lieu of paychecks. The Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards.

For the reasons stated herein, Cabral alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Del Taco failed to provide Cabral and the Aggrieved Employees with all meal periods as required by law;

- b) Del Taco failed to provide Cabral and the Aggrieved Employees with all rest periods as required by law;
- c) Del Taco failed to compensate Cabral and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more meal periods in a workday;
- d) Del Taco failed to compensate Cabral and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more rest periods in a workday;
- e) Del Taco failed to pay Cabral and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular and overtime pay due to off-the-clock work;
- f) Del Taco failed to indemnify Cabral and the Aggrieved Employees for all business expenses;
- g) Del Taco failed to pay Cabral and the Aggrieved Employees split shift premiums as required by the Wage Order;
- h) Del Taco unlawfully deducted wages from the Aggrieved Employees to cover fees charged for withdrawing their wages from pay cards;
- i) Del Taco failed to timely pay Cabral and the Aggrieved Employees all earned and unpaid wages during employment;
- j) Del Taco failed to provide Cabral and the Aggrieved Employees with accurate and complete wage statements; and
- k) Del Taco failed to timely pay Cabral and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Cabral now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Del Taco's violations of the California Labor Code.

The Wage Order

"Wage Order 5" or "The Wage Order" applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services, and includes but is not limited to the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, Del Taco employed Cabral and the Aggrieved Employees as hourly, non-exempt supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and comparable positions. Accordingly Cabral and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 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.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all 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 number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If 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.

In relevant part, California Labor Code § 512 states:

An 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, except that if the total work period per day of the employee is no more than six

hours, the meal period may be waived by mutual consent of both the employer and employee.

An 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No 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.

...

(D) If 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.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.

Del Taco intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Cabral and the Aggrieved Employees as required by law. In failing to do so, Del Taco violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Cabral seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

- (3) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
- (4) \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
- (5) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages Earned for All Hours Worked

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, "The 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."

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Del Taco knowingly failed to pay Cabral and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock. Accordingly, Cabral seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of

whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Indemnify
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802 states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, Del Taco required Cabral and the Aggrieved Employees to travel between company locations on company business, and to complete bank deposits, as a necessary condition of their employment. Del Taco failed to indemnify Cabral and the Aggrieved Employees for their mileage related expenses both during their employment and after such employment ended. Del Taco further required Cabral and the Aggrieved Employees to incur expenses in connection with uniform maintenance and failed to reimburse them for these expenses.

Accordingly, Cabral seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).d

Failure to Pay Split Shift Premiums
(Lab. Code §§ 1197, 1198)

Wage Order § 2 (Q) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (R) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order 9 § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “The 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.”

Del Taco directed Cabral and the Aggrieved Employees to regularly work split shifts. However, Del Taco intentionally failed to pay them the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so doing, Del Taco violated Labor Code §§ 1197 and 1198.

Unlawful Discount of Wages
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

(a) No person, agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designated to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07. In addition, a pay card system must also comply with the requirement of Labor Code § 213(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully

payable, on demand and without discount, at some established business in California.

At all relevant times, Del Taco required the Aggrieved Employees to use a pay card to receive their wages. At all relevant times, the Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards. As a result, Del Taco's pay card system violated Labor Code § 212.

Accordingly, Cabral now seeks civil penalties on behalf of the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 212, and \$200 for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212 (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;

- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; 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.

At relevant times during the applicable limitations period, Del Taco violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Del Taco failed to state in the wage statements it issued to Cabral and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock.

Accordingly, Cabral now seeks civil penalties for the Labor Code violations that Del Taco has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed,

and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Del Taco's failure to pay Cabral and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal periods within the time periods set by California Labor Code § 204, Del Taco failed to timely pay all wages due during employment. Accordingly, Cabral seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not

less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Del Taco has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Cabral and the Aggrieved Employees. Accordingly, Cabral seeks civil penalties from Del Taco on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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 therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Cabral and the Aggrieved Employees as set forth above, Del Taco is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Cabral seeks civil penalties from Del Taco as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Raina Cabral
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco, LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064

EXHIBIT D



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

September 22, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Vanessa Lozano / Del Taco LLC*

To Whom It May Concern:

This is a supplemental notice of Labor Code violations regarding the matter of *Vanessa Lozano / Del Taco LLC*. The original notice dated July 17, 2020 is enclosed herewith.

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Vanessa Lozano (hereafter “Lozano”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to front of house workers (including but not limited to cashiers), and back of house workers (including but not limited to grill workers and taco bar workers) and in other comparable positions (hereafter “Aggrieved Employees”) by Del Taco LLC, a California limited liability company (hereafter “Del Taco”), of violations of Labor Code § 1198.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Lozano and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-2001 (hereafter “the Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

At relevant times, Del Taco frequently required Lozano and the Aggrieved Employees to report to work for shifts of at least four hours in length, only to send them home without any pay for the day.

Failure to Pay Reporting Time Pay
(Labor Code § 1198)

Under Section 5 of the Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),

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.

In relevant part, California Labor Code § 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.

As described above, at all relevant times, Del Taco required Lozano and the Aggrieved Employees to report to work for shifts of at least four hours in length only to send them home without any pay for the day. On such occasions, Del Taco failed to pay Lozano and Aggrieved Employees the “reporting time” wages to which they were entitled pursuant to Labor Code § 1198 and the Wage Order.

Accordingly, Lozano seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak, Esq.

david@spivaklaw.com

cc: Vanessa Lozano
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL
(AND EMAIL WHERE INDICATED)***

July 17, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Vanessa Lozano / Del Taco LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Vanessa Lozano (hereafter "Lozano") provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and in other comparable positions (hereafter "Aggrieved Employees") by Del Taco LLC, a California limited liability company (hereafter "Del Taco"), of violations of Labor Code §§ 201, 202, 203, 204, 212, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Del Taco has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Lozano and the Aggrieved Employees are "employees" within the meaning of Wage Order 5-2001 (hereafter "the Wage Order") § 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

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Statement of Facts

In approximately November 2016, Del Taco first employed Lozano to work in California at its restaurant in Perris, California as a non-exempt, hourly cashier. Del Taco continuously employed Lozano in Perris and Moreno Valley, California as a cashier, and later store manager, from the time of her hire until approximately 2018, when her employment ended. In approximately August 2019, Lozano resumed employment as a cashier with Del Taco in Corona, California. Del Taco continuously employed Lozano as a cashier and store manager from that time until on or about May 28, 2020, when her employment ended.

At all relevant times, Del Taco employed Lozano and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Del Taco classified Lozano and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Del Taco failed to provide Lozano and the Aggrieved Employees with a daily 30-minute off-duty meal period within the first five hours of work. Del Taco required Lozano and the Aggrieved Employees to remain inside its restaurants during their meal and rest breaks. Del Taco further required Lozano and the Aggrieved Employees to sign on-duty meal period agreements even though the nature of their work did not prevent them from taking an off-duty meal period. Del Taco also failed to authorize and permit Lozano and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof, nor did Del Taco seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Del Taco failed to pay premium wages for days on which it failed to provide Lozano and the Aggrieved Employees with all timely, off duty meal and rest periods.

At all relevant times, Del Taco required Lozano and the Aggrieved Employees to drive their personal vehicles from their assigned Del Taco restaurant to other Del Taco restaurants in California, as well as to the bank. Del Taco failed

to reimburse Lozano and the Aggrieved Employees for such mileage. Further, at all relevant times, Del Taco required Lozano and the Aggrieved Employees to incur costs associated with cleaning their work uniforms that displayed the Del Taco logo and failed to reimburse them for such costs.

At all relevant times, Del Taco required Lozano and the Aggrieved Employees to perform work while clocked out. Del Taco required Lozano and the Aggrieved Employees to attend meetings at Del Taco restaurants though it did not pay them for the time spent. Further, as discussed above, Del Taco regularly required Lozano and the Aggrieved Employees to travel between their regular Del Taco restaurant and others in the area to transport supplies while off-the-clock before and after their scheduled shifts. Additionally, Del Taco required Lozano and the Aggrieved Employees to travel to the bank to make deposits while clocked out for work. Del Taco failed to compensate Lozano and the Aggrieved Employees for the time they spent on these activities.

At all relevant times, Del Taco assigned Lozano and the Aggrieved Employees to work “split shifts.” For instance, Del Taco scheduled them to work a morning shift, followed by a night shift, in the same calendar day. However, on such occasions, Del Taco failed to pay Lozano and the Aggrieved Employees a split shift premium as required by the Wage Order.

At all relevant times, Del Taco issued the Aggrieved Employees their wages via bank pay cards in lieu of paychecks. The Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards.

For the reasons stated herein, Lozano alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Del Taco failed to provide Lozano and the Aggrieved Employees with all meal periods as required by law;
- b) Del Taco failed to provide Lozano and the Aggrieved Employees with all rest periods as required by law;

- c) Del Taco failed to compensate Lozano and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more off-duty meal periods in a workday;
- d) Del Taco failed to compensate Lozano and the Aggrieved Employees at one hour's pay on days when Del Taco failed to provide them with one or more rest periods in a workday;
- e) Del Taco failed to pay Lozano and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular and overtime pay due to off-the-clock work;
- f) Del Taco failed to indemnify Lozano and the Aggrieved Employees for all business expenses;
- g) Del Taco failed to pay Lozano and the Aggrieved Employees split shift premiums as required by the Wage Order;
- h) Del Taco unlawfully deducted wages from the Aggrieved Employees to cover fees charged for withdrawing their wages from pay cards;
- i) Del Taco failed to timely pay Lozano and the Aggrieved Employees all earned and unpaid wages during employment;
- j) Del Taco failed to provide Lozano and the Aggrieved Employees with accurate and complete wage statements; and
- k) Del Taco failed to timely pay Lozano and the Aggrieved Employees all earned and unpaid wages at the time of separation of employment.

Accordingly, Lozano now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Del Taco's violations of the California Labor Code.

The Wage Order

"Wage Order 5" or "The Wage Order" applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." § 1. The term "Public Housekeeping Industry" means "any industry, business, or establishment which provides meals, housing, or maintenance services, and includes but is not limited to the following occupations:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, Del Taco employed Lozano and the Aggrieved Employees as hourly, non-exempt supervisors, managers, crew leaders, crew persons, bussers, servers, dishwashers, cooks, chefs, janitors, and comparable positions. Accordingly Lozano and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 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.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all 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 number of hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If 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.

In relevant part, California Labor Code § 512 states:

An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An 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, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No 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.

...

(D) If 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.

California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.

Del Taco intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Lozano and the Aggrieved Employees as required by law. In failing to do so, Del Taco violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Lozano seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

- (3) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
- (4) \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
- (5) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages Earned for All Hours Worked

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The 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.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12)

hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Del Taco knowingly failed to pay Lozano and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed off-the-clock. Accordingly, Lozano seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

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Failure to Indemnify
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802 states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, Del Taco required Lozano and the Aggrieved Employees to travel between company locations on company business, and to complete bank deposits, as a necessary condition of their employment. Del Taco failed to indemnify Lozano and the Aggrieved Employees for their mileage related expenses both during their employment and after such employment ended. Del Taco further required Lozano and the Aggrieved Employees to incur expenses in connection with uniform maintenance and failed to reimburse them for these expenses.

Accordingly, Lozano seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay Split Shift Premium Wages
(Lab. Code §§ 1197, 1198)

Wage Order § 2 (Q) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (R) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order 9 § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be

paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “The 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.”

Del Taco directed Lozano and the Aggrieved Employees to regularly work split shifts. However, Del Taco intentionally failed to pay them the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so doing, Del Taco violated Labor Code §§ 1197 and 1198.

Unlawful Discount of Wages
(Lab. Code § 212)

In relevant part, California Labor Code § 212 states:

- (a) No person, agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:
 - (1) Any order, check, draft, note, memorandum, or other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.
 - (2) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

This statute only permits the use of pay cards as remuneration where the employer has both obtained the employee's voluntary authorization (*see* Labor Code § 213 and O.L. 1994.02.03-1, p.2) and has enabled the employee to use the card to obtain all wages due without incurring charge (O.L. 2008.07.07 and O.L. 1997.10.21). Indeed, the DLSE has specifically noted:

The imposition of a fee in order to readily *access* one's earned and paid wages under a payroll card program which is designated to discharge the employer's wage payment obligation could impermissibly interfere with an employee's receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.

O.L. 2008.07.07. In addition, a pay card system must also comply with the requirement of Labor Code § 213(d), which requires that employer pay deposits to employees be made in a bank, savings and loan association, or credit union "with a place of business in [California]." Further, a pay card system must comply with Labor Code § 212(a), which requires that all wages be fully payable, on demand and without discount, at some established business in California.

At all relevant times, Del Taco required the Aggrieved Employees to use a pay card to receive their wages. At all relevant times, the Aggrieved Employees incurred various fees associated with using and/or cashing said pay cards. As a result, Del Taco's pay card system violated Labor Code § 212.

Accordingly, Lozano now seeks civil penalties on behalf of the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 212, and \$200 for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation of California Labor Code § 212 (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; 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.

At relevant times during the applicable limitations period, Del Taco violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Del Taco failed to state in the wage statements it issued to Lozano and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock and on-the-clock.

Accordingly, Lozano now seeks civil penalties for the Labor Code violations that Del Taco has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Del Taco's failure to pay Lozano and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal and rest periods within the time periods set by California Labor Code § 204, Del Taco failed to timely pay all wages due during employment. Accordingly, Lozano seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

\$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from

maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Del Taco has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely off-duty meal and rest periods, and records pertaining to all unpaid hours worked by Lozano and the Aggrieved Employees. Accordingly, Lozano seeks civil penalties from Del Taco on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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 therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay Lozano and the Aggrieved Employees as set forth above, Del Taco is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Lozano seeks civil penalties from Del Taco as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay

period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Vanessa Lozano
Walter Haines, Esq.
Shaun Setareh, Esq.

Del Taco LLC
c/o Andrew Satenberg
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064
asatenberg@manatt.com

1 **PROOF OF SERVICE**

2 State of California,
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 16530 Ventura Blvd., Suite
7 203, Encino, California 91436.

8 2. I am familiar with the practice of The Spivak Law Firm, for
9 collection and processing of correspondence for mailing with the United
10 States Postal Service. It is the practice that correspondence is deposited
11 with the United States Postal Service the same day it is submitted for
12 mailing.

13 On Tuesday, December 01, 2020, I served the foregoing document
14 described as **FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND
15 CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004,
16 LABOR CODE §§ 2698, ET SEQ.** on interested parties by placing a true and
17 correct copy thereof enclosed in a sealed envelope, with postage fully
18 prepaid, addressed as follows:

19 **Andrew L. Satenberg, Esq.**
20 **Manatt, Phelps & Phillips, LLP**
21 **2049 Century Park East, Suite 1700**
22 **Los Angeles, CA 90067**
23 **asatenberg@manatt.com**

24 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
25 electronic service addresses listed above from my electronic service address
26 breck@spivaklaw.com or boyama@spivaklaw.com.

27 EXECUTED on Tuesday, December 01, 2020, at Los Angeles, California.

28 XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

 (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

22 
23 _____
24 BRECK OYAMA