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a representative aggrieved employee

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TARA BEANE, on behalf of the State of
California and all other aggrieved
employees;

Plaintiff,

vs.

PIZZA NOVA – HARBOR DRIVE, INC.,
a California corporation; PIZZA NOVA
SAN MARCOS, LLC, a California limited
liability company; PIZZA NOVA
SOLANA BEACH, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2020-00038347-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties for Failure to Pay All Regular and Minimum Wages
2. Civil Penalties for Failure to Pay All Overtime
3. Civil Penalties for Meal Period Violations
4. Civil Penalties for Rest Period Violations
5. Civil Penalties for Unlawful Tip Pooling
6. Civil Penalties for Paid Sick Leave
7. Civil Penalties for Failure to Pay Split Shift Premium
8. Civil Penalties for Failure to Pay Reporting Time Pay
9. Civil Penalties for Unlawful Deductions From Wages
10. Civil Penalties for Untimely Wage Payment
11. Civil Penalties for Wage Statement Violations
12. Civil Penalties for Failure to Timely Pay All Wages Upon Separation
13. Civil Penalties for Failure to Reimburse Business Expenses
14. Civil Penalties for Recordkeeping Violations

1 Plaintiff TARA BEANE (“Plaintiff”), as an individual and on behalf of the State of
2 California as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA,” California Labor Code § 2698, *et seq.*), brings
4 this representative action against PIZZA NOVA – HARBOR DRIVE, INC., PIZZA NOVA SAN
5 MARCOS, LLC, PIZZA NOVA SOLANA BEACH, LLC and DOES 1 through 50 (hereinafter
6 collectively referred to as “Defendants”), alleging as follows:

7 **INTRODUCTION**

8 1. This is a representative action brought under the California Labor Code.

9 2. This complaint challenges systemic unlawful employment policies and practices that
10 resulted in violations of the Labor Code against individuals who worked for Defendants.

11 3. Defendants currently operate Pizza Nova restaurant locations in Point Loma,
12 San Marcos, and Solana Beach in San Diego County. The restaurants are under the same
13 ownership and management. Employees at all of Defendants’ locations were subject to the same
14 employment policies, practices, corporate management, payroll administration, ownership and
15 control.

16 4. Plaintiff brings this action for a number of California Labor Code violations,
17 including that Defendants required Plaintiff and aggrieved employees to work “off-the-clock”
18 without pay during meal periods; Defendants failed to pay Plaintiff and aggrieved employees for
19 certain staff-wide meetings; Defendants required Plaintiff and aggrieved employees to perform
20 work at home without pay (menu study); Defendants failed to pay overtime when on the seventh
21 consecutive day worked by Plaintiff and the aggrieved employees; Defendants maintained an
22 unlawful and non-neutral rounding/time shaving policy and practice; Defendants failed to pay
23 reporting time pay for shifts when employees were sent home early from a scheduled shift;
24 Defendants failed to pay split shift premiums for days when Plaintiff and the aggrieved employees
25 were required to work two shifts in a workday; Defendants maintained unlawful tip pooling and
26 wage deduction practices; employees did not receive meal and rest periods or premium payments in
27 lieu thereof; Defendants’ failed to reimburse employees for the required use of their personal
28 devices; Defendants failed to provide paid sick leave and/or provide notice of such sick leave;

1 Defendants failed to pay all wages owe at separation of employment; and Defendants failed to issue
2 accurate itemized wage statements or maintain required records.

3 **JURISDICTION & VENUE**

4 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
5 California Constitution.

6 6. Venue as to each defendant is proper in this judicial district under Code of Civil
7 Procedure sections 395 and 395.5 because Defendants conduct substantial business in this county,
8 employed Plaintiff in this county, and committed some of the alleged violations in this county.

9 **PARTIES**

10 7. Plaintiff TARA BEANE worked for Defendants in San Diego County from
11 October 27, 2015 until June 2020 as an hourly, non-exempt employee. She was employed as a
12 Server at Defendants' Point Loma location.

13 8. The State of California, via the Labor and Workforce Development Agency
14 ("LWDA"), is the real party in interest in this action with respect to the PAGA claims.

15 9. Plaintiff is informed, believes and alleges that Defendant PIZZA NOVA –
16 HARBOR DRIVE, INC. is a California corporation that does business in California, including in
17 San Diego. Defendants PIZZA NOVA SAN MARCOS, LLC and PIZZA NOVA SOLANA
18 BEACH, LLC are each California limited liability companies that do business in California,
19 including in San Diego.

20 10. The true names and capacities, whether individual, corporate, or otherwise, of the
21 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
22 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and
23 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
24 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
25 capacities when they become known.

26 11. Plaintiff is informed, believes and alleges that all defendants in this action are
27 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
28 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved

1 employees, suffers and permits them to work, and engages the workforce creating a common law
2 employment relationship. Additionally, all defendants have common ownership, common
3 management, interrelationship of operations, and centralized control over labor relations and are
4 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
5 omissions alleged herein.

6 12. Plaintiff is informed, believes and alleges that each defendant acted in all respects
7 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
8 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
9 such that the acts and omissions of each defendant are legally attributable to all others.

10 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants
11 violated and caused to be violated Labor Code and IWC Wage Order provisions regulating
12 minimum wages and days of work and Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or
13 2802 and may be held liable as the employer for such violation, as provided in Labor Code section
14 558.1. Additionally, these individuals are further liable as employer-individuals under Labor Code
15 section 558 and 1197.1.

16 **GENERAL ALLEGATIONS**

17 14. Plaintiff was employed by Defendants as a Server at Defendants' Point Loma
18 location in San Diego from about October 27, 2015 to June 2020. Plaintiff was classified as a non-
19 exempt employee and paid on an hourly basis. In addition to her regular hourly wage, Defendants
20 paid Plaintiff tips and other forms of remuneration.

21 15. ***Off-the-clock work.*** At the time of hire and periodically throughout their
22 employment, Defendants required Plaintiff and the aggrieved employees to memorize menus and
23 other items (e.g., ingredients in entrees and allergy information). Plaintiff and the aggrieved
24 employees were given three attempts to take a written test of the menu and other items and pass
25 with a degree of 80% accuracy. Defendants required Plaintiff and the aggrieved employees to
26 "study" for the test during their personal time and did not compensate Plaintiff and the aggrieved
27 employees for this work.

1 16. Defendants also failed to pay Plaintiff and the aggrieved employees for staff
2 meetings and “short shifts” when Plaintiff and the aggrieved employees were sent home due to the
3 restaurants being “slow.” Defendants required Plaintiff and the aggrieved employees to attend staff
4 meetings that were around an hour in length. Many of these meetings occurred on days when
5 Plaintiff and the aggrieved employees were not scheduled to work and/or before the restaurants
6 opened. Although some employees would clock in for these meetings, Defendants failed to
7 compensate employees for this time.

8 17. Similarly, Defendants failed to pay Plaintiff and the aggrieved employees for some
9 of the times when employees worked an amount less than their scheduled shift (e.g., 45 minutes or
10 an hour). This would usually occur when employees were scheduled to work their normal shift but
11 were sent home shortly after arriving because there were not enough patrons (i.e., the restaurant was
12 “slow”). Although these employees were clocked in for a short shift, Plaintiff is informed and
13 believes that Defendants failed to pay wages for this time.

14 18. As discussed below, Plaintiff and the aggrieved employees were also forced to work
15 off the clock when they were not relieved for their meal periods.

16 19. ***Time shaving/non-neutral rounding.*** Defendants deprived Plaintiff and the
17 aggrieved employees of their minimum, regular, and overtime wages through their use of a non-
18 neutral rounding policy (i.e., time shaving). Defendants had a practice of using *one-way rounding*
19 (i.e., time shaving) for Plaintiff and the aggrieved employees “clock in” time. Defendants did not
20 round any of Plaintiff’s “clock out” entries. Instead, Defendants rounded in a non-neutral and
21 unfair manner that deprived Plaintiff and the aggrieved employees of wages over time. Plaintiff is
22 informed and believes that Defendants rounded and/or reduced the “clock in” time to match her
23 scheduled shift time (regardless of when she actually started working) and/or rounded her time in a
24 manner that ensured she did not work a length of time that would entitle her to a meal period or
25 overtime. These edits to Plaintiff and the aggrieved employees time entries occurred within the
26 Aloha system.

27 20. ***Reporting Time Pay.*** Defendants frequently sent Plaintiff and the aggrieved
28 employees home early from scheduled shifts because business was slow. During these times

1 Plaintiff and the aggrieved employees were furnished with less than half of their scheduled shift,
2 but did not receive reporting time pay. Defendants also failed to pay reporting time pay to Plaintiff
3 and the aggrieved employees when they were required to report to work for a second shift in a
4 workday but were furnished with less than two hours of work on the second shift.

5 21. **Overtime.** As discussed above, Defendants failed to pay overtime to Plaintiff and the
6 aggrieved employees as a result of their use of a non-neutral rounding policy and unlawful practice
7 of time shaving. Plaintiff and the aggrieved employees were also forced to work off the clock
8 during meal periods and to memorize Defendants menu items and other information, and were not
9 paid for some of the mandatory staff meetings that they attended.

10 22. Defendants' workweek is defined in its Employee Handbook as "a fixed and
11 regularly recurring period of 168 hours (seven 24-hour periods) that begins at 6:01 each Monday
12 and ends on every Sunday at 11:59 p.m." The workweek definition published in Defendants'
13 Employee Handbook does not comply with the applicable Wage Order because it is not a fixed
14 period of 168 hours. Even assuming this definition is valid, Defendants also failed to pay overtime
15 to Plaintiff and the aggrieved employees when they worked seven consecutive days in the
16 workweek defined by Defendants.

17 23. **Split Shifts.** Defendants required Plaintiff and the aggrieved employees to work two
18 shifts in a workday but failed to pay the applicable split shift premium. Defendants referred to
19 these shifts as "doubles." Plaintiff's time and payroll records demonstrate that she worked two
20 shifts in a single workday but was not paid a split shift premium for those shifts. For example, on
21 December 10, 2019, Plaintiff was required to work two shifts in the same workday that were
22 separated by a *three-and-a-half-hour* period in between the shifts. The non-working time between
23 the two shifts was not meal period. Plaintiff was not paid a split shift premium for this day.

24 24. **Tip Pooling.** Plaintiff alleges that she and the aggrieved employees were forced to
25 share a percentage of their cash and credit card tips with the executive chef, kitchen, "back of the
26 house" staff, and supervisors. Defendants' tip pooling policy was unlawful because supervisors
27 and/or employees not in the line of service also shared in the tips, to the loss of the employee who
28 earned those tips. Defendants' policy that servers "tip out" back of the house and kitchen staff was

1 communicated multiple times by Defendant, including in writing. Plaintiff is informed and believes
2 that Defendants failed to keep accurate records of the gratuities.

3 25. ***Deductions From Wages.*** At the end of each shift, Plaintiff and the aggrieved
4 employees were paid in cash for all tips that customers left via *credit card*. The credit card tips
5 were tracked by Defendants. Defendants did not track the cash tips. Plaintiff and the aggrieved
6 employees would then be required to “tip out” other employees based on a percentage of food and
7 drink sales. Although Plaintiff and the aggrieved employees were forced to pay a percentage of
8 their tips (cash and credit card) to other employees, the *full* amount of the credit card tips was
9 reported on the wage statements of Plaintiff and the aggrieved employees. Defendants failed to
10 account for the percentage of the credit card tips that Plaintiff and the aggrieved employees were
11 forced to give other employees. The *full* credit card tips (including amounts “tipped out” to others)
12 was then deducted from the hourly wages of Plaintiff and the aggrieved employees.

13 26. For example, on Plaintiff’s October 18, 2019 wage statement, Plaintiff had gross
14 earnings of \$1,854.38 and her reported tips are \$1,310.42. Plaintiff only received \$124.49 in net
15 wages after the deductions. Despite being required to “tip out” to other employees a percentage of
16 the \$1,310.42 in tips reported on her paycheck, the *full* tip amount was deducted from her hourly
17 wages. She was also taxed on tips that she was required to pay to other employees. Plaintiff is
18 informed and believes that this practice affected all employees who received tips from patrons.

19 27. ***Meal Periods.*** Plaintiff’s actual meal periods were often late, short, interrupted, or
20 missed due to Defendants’ policies and practices which did not provide enough coverage for
21 employees to take meal periods and which effectively required employees to skip, work through, or
22 cut short meal periods on certain occasions. Plaintiff also believes that Defendants altered the time
23 entries for her and the aggrieved employees so that based on the length of the altered shift length,
24 Plaintiff and the aggrieved employees would not be entitled to a meal period. Plaintiff is informed,
25 believes and alleges that these violations are evident based on the records maintained by Defendants
26 and/or will be revealed through records evidencing Defendants’ edits to Plaintiff and the aggrieved
27 employees’ time records.

1 28. Plaintiff's wage statements reveal that she did not receive a meal period premium
2 during the statutory period, despite receiving non-compliant meal periods. Defendants also used an
3 unlawful on-duty meal period agreement to deprive Plaintiff and the aggrieved employees of meal
4 periods and/or meal period premium payments. Plaintiff is informed, believes and alleges that
5 Defendants' policy and practice of not paying meal period premiums is a matter of common
6 corporate policy and payroll administration such that it applies and affected all other aggrieved
7 employees.

8 29. ***Rest Periods.*** Plaintiff and other aggrieved employees routinely worked through rest
9 periods, which were neither authorized or permitted. Given the work environment and demands of
10 the restaurant, Plaintiff and the aggrieved employees simply were unable to take their 10- minute
11 rest breaks. During the times when Plaintiff and the aggrieved employees did have time to take a
12 rest period, they were prohibited by Defendants' written policies from leaving the premises during a
13 rest period. In other words, Defendants unlawfully imposed constraints on how Plaintiff and the
14 aggrieved employees could spend their rest periods. Defendants' Employee Handbook stated that
15 employees were "not allowed to leave the premises during rest periods, and they are encouraged to
16 use the Company's 'lunch room' for their rest period." Defendants' policy and practice of
17 controlling where Plaintiff and the aggrieved employees were allowed to take a rest period (i.e., on
18 premises), among other factors, rendered the rest period subject to Defendants' control. Plaintiff
19 alleges that these violations were common and widespread, due to Defendants' written and stated
20 policies and practices and due to the demanding nature of working in a busy restaurant.

21 30. Defendants never paid a rest period premium to Plaintiff during her employment,
22 despite her entitlement to compliant rest periods or premiums in lieu of such rest periods.

23 31. ***Business Expenses.*** Defendants requires their employees to use their personal
24 devices (cell phone, laptop) and internet/data for work-related purposes. Plaintiff and the aggrieved
25 employees were required and instructed by Defendants to download the Hot Schedules app on their
26 personal cell phones or access it from home on a personal device. Hot Schedules was used by
27 Defendants to communicate work schedules and changes to the work schedule and was used by
28 Plaintiff and the aggrieved employees to cover shifts and seek coverage for their shifts. Other non-

1 exempt employees (e.g., delivery drivers) were required to use their personal cell phone to
2 communicate with customers and Pizza Nova regarding deliveries and for navigation to different
3 locations. In direct consequence of their remote work job duties, Plaintiff and the aggrieved
4 employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that
5 Defendants did not reimburse as a matter of policy and practice.

6 32. ***Paid Sick Leave.*** Plaintiff alleges that Defendants failed to provide paid sick leave
7 to her and the aggrieved employees. Despite calling into work sick multiple times and informing
8 management that she was sick, Plaintiff was not paid any paid sick leave. To the extent Defendants
9 assert that they provided Plaintiff and the aggrieved employees with any paid sick leave,
10 Defendants nonetheless failed to provide Plaintiff and the aggrieved employees written notice that
11 set forth the amount of paid sick leave available either on employees' wage statements or in a
12 separate writing.

13 33. ***Wage Statements.*** For all the reasons discussed above, Defendants issued inaccurate
14 wage statements to Plaintiff and the aggrieved employees, in violation of Labor Code section 226.
15 First, during any time when Defendants did pay a meal period premium, the total hours worked
16 amount on wage statements for Plaintiff and other aggrieved employees was incorrect. These wage
17 statements included the meal premium in the total which did not reflect the actual total hours
18 worked by employees.

19 34. Second, Defendants violated Labor Code section 226 because the wage statements
20 did not correctly reflect the wages and hours of Plaintiff and other aggrieved employees.
21 Defendants engaged in a pattern of time shaving and requiring employees to work "off the clock"
22 for various tasks, mandatory meetings, and during meal periods, and failed to properly pay
23 overtime, which deprived Plaintiff and the aggrieved employees of minimum, regular, and overtime
24 wages. Defendants also failed to pay split shift premiums and reporting time pay. As a result, the
25 wage statement issued by Defendants listed the incorrect gross wages earned, total hours worked,
26 net wages earned, and all applicable hourly rates in effect during the pay period with the number of
27 hours worked at each hourly rate by the employee. Second, Defendants violated Labor Code
28 section 226 because the wage statements did not correctly reflect the wages and hours of Plaintiff

1 and other aggrieved employees. As described throughout this notice, Defendants engaged in a
2 pattern of time shaving and requiring employees to work “off the clock” for various tasks,
3 mandatory meetings, and during meal periods, and failed to properly pay overtime, which deprived
4 Plaintiff and the aggrieved employees of minimum, regular, and overtime wages. Defendants also
5 failed to pay split shift premiums and reporting time pay. As a result, the wage statement issued by
6 Defendants listed the incorrect gross wages earned, total hours worked, net wages earned, and all
7 applicable hourly rates in effect during the pay period with the number of hours worked at each
8 hourly rate by the employee. These wage statement defects occurred with respect to Plaintiff and
9 all other aggrieved employees in violation of Labor Code sections 226(a) (1), (2), (5), and (9).

10 35. As a result, Plaintiff and other aggrieved employees cannot promptly and easily
11 determine from the wage statement alone the wages paid or earned without reference to other
12 documents or information, though Defendants’ facial violation of Labor Code section 226 requires
13 application of the civil penalties applicable thereto.

14 36. Plaintiff is informed, believes and alleges that Defendants have engaged in willful
15 violations of the Labor Code and IWC Wage Orders by creating and maintain policies, practices
16 and customs that knowingly deny Plaintiff and aggrieved employees their legal rights and benefits.

17 **PAGA ALLEGATIONS**

18 37. “Notwithstanding any other provision of law, any provision of this code that
19 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
20 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
21 violation of this code, may, as an alternative, be recovered through a civil action brought by an
22 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
23 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

24 38. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
25 behalf of the State of California and all other current and former non-exempt employees of
26 Defendants who work or worked within the State of California within the one-year period prior to
27 the date on which Plaintiff first provided written notice to the Labor and Workforce Development
28

Agency and Defendants under Labor Code § 2699.3 and continuing through the present (the “aggrieved employees” and the “PAGA Period”).

39. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and suffered one or more of the Labor Code violations committed by Defendants and alleged in this Complaint.

40. On August 18, 2020, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff paid the requisite filing fee to the LWDA. The LWDA notice is incorporated by reference and attached to this Complaint as **Exhibit A**.

41. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, Defendants did not give written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations.

42. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without any notice of cure from them or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff exhausted all prerequisites and commences this civil action under Labor Code § 2699.

FIRST CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO PAY ALL REGULAR AND MINIMUM WAGES (PAGA)

Labor Code §§ 2698, *et seq.*

43. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

44. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3 .”

1 45. Labor Code section 2699(f) provides: “For all provisions of this code except those
2 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
3 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
4 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
5 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
6 employee per pay period for each subsequent violation.”

7 46. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
8 of an employer who violates, or causes to be violated, a section of this chapter or any provision
9 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
10 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
11 underpaid employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages.”

15 47. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
16 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
17 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
18 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
19 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
21 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
22 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
23 underpaid employee for each pay period for which the employee is underpaid regardless of whether
24 the initial violation is intentionally committed.”

25 48. Plaintiff does not seek for any cause of action in this Complaint under PAGA any
26 amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.* (i.e., underpaid
27 wages).

1 49. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
2 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
3 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
4 and “Minimum Wages” sections of the applicable orders).

5 50. As discussed above, Defendants deprived Plaintiff and the aggrieved employees of
6 minimum and regular wages through their use of a non-neutral rounding policy (i.e., time-shaving).
7 *See, Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578; *Troester v. Starbucks Corp.*
8 (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and neutral on its face and as applied –
9 over a period of time – in order to lawfully comply with California’s requirement that workers be
10 paid for “all hours worked.”]; *Leyva v. Medline Indus.* (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v.*
11 *Time Warner Entertainment-Advance/Newhouse Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077
12 [“If an employer’s rounding practice does not permit both upward and downward rounding, then
13 the system is not neutral.”]; *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th
14 889, 701, n.4; and *Silva v. See’s Candy Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251. Plaintiff is
15 informed and believes that Defendants also edited Plaintiff and the aggrieved employees’ time
16 records so that they would not be entitled to meal periods, resulting in off the clock work. Plaintiff
17 and the aggrieved employees were also forced to work off the clock to memorize menu and other
18 items, during meal periods, and during “short shifts” in which they were sent home early when the
19 restaurants were slow.

20 51. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
21 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
22 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
23 and costs to the extent permitted by law, including under Labor Code section 2699(g).

24 **SECOND CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR FAILURE TO PAY**

26 **ALL OVERTIME WAGES (PAGA)**

27 **Labor Code §§ 2698, *et seq.***

28 52. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 53. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
2 employees no less than one and one-half times their respective “regular rate of pay” for all hours
3 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
4 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
5 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
6 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders
7 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

8 54. Defendants failed to pay overtime to Plaintiff and the aggrieved employees as a
9 result of their non-neutral rounding policy and time shaving practice. Plaintiff and the aggrieved
10 employees were also forced to work off the clock to memorize menu and other items, during meal
11 periods, and during “short shifts” in which they were sent home early when the restaurants were
12 slow. Further, Defendants failed to pay overtime to Plaintiff and the aggrieved employees when
13 they worked seven consecutive days in a workweek.

14 55. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
15 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
16 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
17 to the extent permitted by law, including under Labor Code section 2699(g).

18 56. As derivative and related violations, Defendants have also violated Labor Code
19 sections 551, 552 and 556, which prohibit an employer from employing Plaintiff and aggrieved
20 employees for seven days in a row.

21 **THIRD CAUSE OF ACTION**

22 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

23 **Labor Code §§ 2698, *et seq.***

24 57. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 58. Defendants willfully failed in their affirmative obligation to consistently provide
26 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
27 beginning before the fifth hour of hour for each work period of more than five hours per day and a
28 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of

1 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
2 Periods” sections of the applicable orders)..

3 59. Further, Defendants willfully failed in their affirmative obligation to consistently pay
4 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
5 compensation for each workday that a fully compliant meal period was not provided, in violation of
6 Labor Code sections 226.7 and the IWC Wage Orders.

7 60. Plaintiff and the aggrieved employees experienced missed, short, late, and
8 interrupted meal periods. Plaintiff is also informed and believes that Defendants altered employees’
9 time records to change shift lengths such that employees would not be entitled to meal periods.
10 Defendants failed to pay Plaintiff and the aggrieved employees meal period premiums on workdays
11 when they experienced non-compliant meal periods or missed a meal period.

12 61. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
13 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
14 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
15 to the extent permitted by law, including under Labor Code section 2699(g).

16 **FOURTH CAUSE OF ACTION**

17 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

18 **Labor Code §§ 2698, *et seq.***

19 62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

20 63. Defendants willfully failed in their affirmative obligation to consistently authorize
21 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
22 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
23 Code sections 226.7 and 516 and the IWC Wage Orders (the “Rest Periods” sections of the
24 applicable orders).

25 64. Further, Defendants willfully failed in their affirmative obligation to consistently pay
26 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
27 compensation for each workday that a fully compliant rest period was not provided, in violation of
28 Labor Code sections 226.7 and the IWC Wage Orders.

1 65. Given the work environment and demands at Defendants' locations, Plaintiff and the
2 aggrieved employees were unable to take their rest periods. Defendants also unlawfully imposed
3 constraints on how Plaintiff and the aggrieved employees could spend their rest periods by stating
4 that employees were "not allowed to leave the premises during rest periods, and they are
5 encouraged to use the Company's 'lunch room' for their rest period." Defendants' written policy
6 and practice of controlling where Plaintiff and the aggrieved employees were allowed to take a rest
7 period (i.e., on premises), among other factors, rendered the rest periods subject to Defendants'
8 control. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Defendants failed to pay
9 any rest period premium payments for the rest period non-compliance.

10 66. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
11 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
12 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
13 to the extent permitted by law, including under Labor Code section 2699(g).

14 **FIFTH CAUSE OF ACTION**

15 **CIVIL PENALTIES FOR UNLAWFUL TIP POOLING (PAGA)**

16 **Labor Code §§ 2698, et seq.**

17 67. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 68. As set forth in this Representative Action Complaint, during the PAGA Period
19 Defendants violated and are liable pursuant to Labor Code sections 350 to 356 by allowing
20 employees outside the line of service to share in the mandatory tip pool.

21 69. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
22 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
23 Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay period for
24 each initial violation and \$200 per employee per pay period for all subsequent violations.

25 **SIXTH CAUSE OF ACTION**

26 **CIVIL PENALTIES FOR PAID SICK LEAVE VIOLATIONS (PAGA)**

27 **Labor Code §§ 2698, et seq.**

28 70. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 71. California Labor Code section 246 requires employers to provide paid sick leave to
2 eligible employees either on an accrual or front-loaded basis in the amounts specified within section
3 246.

4 72. Labor Code section 246(i) requires employers to provide employees with written
5 notice every pay period “that sets forth the amount of paid sick leave available, or paid time off in
6 lieu of sick leave.” The notice can be either on the employees’ wage statements or a separate
7 written notice.

8 73. Plaintiff and the aggrieved employees were not provided with or permitted to use
9 any paid sick leave when missing work for reasons permitted by California’s sick leave laws.
10 Further, assuming Defendants claim they provided paid sick leave to Plaintiff and the aggrieved
11 employees, Defendants failed to provide Plaintiff and the aggrieved employees with the required
12 written notice of paid sick leave accrual (or amount available) each pay period and are liable for
13 civil penalties accordingly.

14 74. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
15 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
16 Labor Code section 2699(f), which provides a civil penalty of \$100 per employee per pay period for
17 each initial violation and \$200 per employee per pay period for all subsequent violations.

18 **SEVENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES FOR FAILURE TO PAY SPLIT SHIFT PREMIUMS** 20 **(PAGA)**

21 **Labor Code §§ 2698, *et seq.***

22 75. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 76. Section 4(c) of IWC Wage Order number 5 requires an employer to pay one hour of
24 pay at the minimum wage when an employee works a split shift (i.e., split shift premium). A split
25 shift premium is owed when an employee’s work schedule “is interrupted by non-paid non-working
26 periods” “other than bona fide rest or meal periods.” IWC Wage Order 5, § 2(R).

27 77. Defendants required Plaintiff and the aggrieved employees to work two shifts in a
28 workday but failed to pay the applicable split shift premium. Defendants referred to these shifts as

1 “doubles.” Plaintiff’s time and payroll records demonstrate that routinely worked two shifts in a
2 single workday but was not paid a split shift premium for those shifts. The non-working time
3 between the two shifts were not meal periods. Plaintiff is informed and believes that this issue also
4 impacted the aggrieved employees.

5 78. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
6 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
7 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
8 to the extent permitted by law, including under Labor Code section 2699(g).

9 **EIGHTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR FAILURE TO PAY REPORTING TIME PAY**

11 **(PAGA)**

12 **Labor Code §§ 2698, *et seq.***

13 79. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 80. Section 5(a) of IWC Wage Order number 5 requires an employer to pay reporting
15 time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with
16 less than half of the scheduled shift. In this situation, the employer owes the employee reporting
17 time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5(C)
18 requires an employer to pay reporting time pay if an employee is required to report to work for a
19 second time and is furnished with less than two hours of work on the second reporting. In this
20 situation, the employer owes the employee reporting time pay in the amount of the greater of two
21 hours or half the scheduled shift length.

22 81. As described above, Defendants frequently sent Plaintiff and the aggrieved
23 employees home early from scheduled shifts because business was slow. During these times
24 Plaintiff and the aggrieved employees were furnished with less than half of their scheduled shift,
25 but did not receive reporting time pay. Defendants also failed to pay reporting time pay to Plaintiff
26 and the aggrieved employees when they were required to report to work for a second shift in a
27 workday but were furnished with less than two hours of work on the second shift.

1 82. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
2 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
3 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
4 to the extent permitted by law, including under Labor Code section 2699(g).

5 **NINTH CAUSE OF ACTION**

6 **CIVIL PENALTIES FOR UNLAWFUL DEDUCTIONS FROM WAGES**

7 **(PAGA)**

8 **Labor Code §§ 2698, *et seq.***

9 83. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 84. Labor Code section 221 renders it unlawful to collect or receive from an employee
11 any part of wages theretofore paid by said employer to said employee.

12 85. Defendants violated Labor Code section 221 by deducting amounts for "tips" from
13 Plaintiff and the aggrieved employees' paychecks although a percentage of those tip amounts were
14 actually paid to other employees under Defendants' forced tip out policy.

15 86. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
16 other recoverable amounts under the foregoing sections of the Labor Code, and section 225.5, in
17 addition to under Labor Code section 2699(f), which provides a civil penalty of \$100 per employee
18 per pay period for each initial violation and \$200 per employee per pay period for all subsequent
19 violations.

20 **TENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES (PAGA)**

22 **Labor Code §§ 2698, *et seq.***

23 87. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 88. Defendants willfully failed in their affirmative obligation to timely pay all wages and
25 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
26 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
27 basis) and on the regularly-scheduled weekly payday for any weekly employees, in violation of
28

1 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
2 the applicable orders).

3 89. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **ELEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS (PAGA)**

9 **Labor Code §§ 2698, *et seq.***

10 90. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 91. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
13 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
14 each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
16 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

17 92. As described in the preceding paragraphs, Defendants failed in their affirmative
18 obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees in
19 violation of Labor Code section 226(a).

20 93. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
21 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
22 by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and
23 costs to the extent permitted by law, including under Labor Code section 2699(g).

24 **TWELFTH CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR FAILURE TO TIMELY PAY ALL WAGES UPON** 26 **SEPARATION OF EMPLOYMENT (PAGA)**

27 **Labor Code §§ 2698, *et seq.***

28 94. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 95. Defendants willfully failed in their affirmative obligation to pay all wages earned
2 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
3 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
4 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
5 Labor Code sections 201 through 203 and the IWC Wage Orders.

6 96. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
7 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
8 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
9 to the extent permitted by law, including under Labor Code section 2699(g).

10 **THIRTEENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS**
12 **EXPENSES (PAGA)**

13 **Labor Code §§ 2698, *et seq.***

14 97. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

15 98. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
16 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in
17 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

18 99. Defendants required Plaintiff and the aggrieved employees to use their personal
19 devices (cell phone/laptop) for work related purposes but did not reimburse them.

20 100. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
21 aggrieved employees and the State of California for civil penalties as required by Labor Code
22 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
23 by law, including under Labor Code section 2699(g).

24 **FOURTEENTH CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

26 **Labor Code §§ 2698, *et seq.***

27 101. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 102. Labor Code section 1174 provides: “Every person employing labor in this state
2 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which
3 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
4 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
5 employed at the respective plants or establishments. These records shall be kept in accordance with
6 rules established for this purpose by the commission, but in any case shall be kept on file for not
7 less than three years.”

8 103. Labor Code section 1174.5 provides: “Any person employing labor who willfully
9 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
10 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
11 hundred dollars (\$500).”

12 104. Defendants willfully failed in their affirmative obligation to maintain accurate
13 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of
14 Labor Code section 1174.

15 105. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
16 aggrieved employees and the State of California for civil penalties as required by Labor Code
17 section 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
18 including under Labor Code section 2699(g).

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Plaintiff, as an individual and as a representative under the PAGA, prays for judgment as follows:

- Dated: October 22, 2020


LAUREN N. VEGA, ESQ.
NICHOLAS J. FERRARO
Attorney for Plaintiff Tara Beane

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EXHIBIT A **LWDA NOTICE**

FERRARO

EMPLOYMENT LAW

NICHOLAS J. FERRARO
nick@ferraroemploymentlaw.com

August 18, 2020

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

PAGA NOTICE VIA ONLINE FILING

California Labor and Workforce Development Agency
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

PAGA FILING FEE VIA U.S. MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, Tenth Floor
San Francisco, California 94102

PAGA NOTICE VIA EMAIL AND CERTIFIED U.S. MAIL (RETURN RECEIPT)

PIZZA NOVA - HARBOR DRIVE, INC.
5050 North Harbor Drive
San Diego, CA 92106

PIZZA NOVA SAN MARCOS, LLC
141 N Twin Oaks Valley Rd
San Marcos, CA 92069

PIZZA NOVA SOLANA BEACH, LLC
P.O. Box 9395
San Diego CA 92169

JOHN FREIS, CHARLES MUIRHEAD, and
KELLY BOWIE
c/o PIZZA NOVA
P.O. Box 9395
San Diego CA 92169

PIZZA NOVA NEWPORT BEACH, LLC
P.O. Box 600
Solana Beach, CA 92075

Legal Counsel for Defendants:
Olga Savage
Procopio Cory Hargreaves and Savitch LLP
Olga.Savage@procopio.com

Dear Labor Enforcement Officer and Pizza Nova Representatives:

This letter serves as Claimant TARA BEANE's ("Claimant") written notice under Labor Code section 2699.3 of prior and ongoing violations of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders committed by Defendants PIZZA NOVA - HARBOR DRIVE, INC.; PIZZA NOVA SAN MARCOS, LLC; PIZZA NOVA SOLANA BEACH, LLC; PIZZA NOVA NEWPORT BEACH, LLC; and JOHN FREIS, CHARLES MUIRHEAD, and KELLY BOWIE (hereinafter

2305 HISTORIC DECATUR ROAD, SUITE 100 | SAN DIEGO, CALIFORNIA 92106 | TEL: 619-693-7727

www.ferraroemploymentlaw.com

collectively referred to as “Pizza Nova” or “Defendants”).

If the Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations and violations set forth in this notice within the statutorily-prescribed time period under Labor Code section 2699.3, Claimant intends to seek and recover civil penalties on behalf of Claimant, the State of California, and all other aggrieved employees of Defendants under Labor Code section 2698, *et seq.* for all Labor Code violations committed by Defendants. *See e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

FACTUAL STATEMENT

Pizza Nova currently operates restaurant locations in Point Loma, San Marcos, and Solana Beach in San Diego County. Pizza Nova may also have employed aggrieved employees at other locations during the relevant time period. The restaurants are owned and managed by JOHN FREIS, CHARLES MUIRHEAD, AND KELLY BOWIE. Employees at all of the Pizza Nova locations were subject to the same employment policies, practices, corporate management, payroll administration, ownership and control.

Claimant was employed by Defendants as a Server at Pizza Nova’s Point Loma location in San Diego from about October 27, 2015 to June 2020. Claimant was classified as a non-exempt employee and paid on an hourly basis. In addition to her regular hourly wage, Defendants paid Claimant tips and other forms of remuneration.

The “aggrieved employees” in this action include all non-exempt employees of Defendants (as defined above) who worked in the State of California during the one-year period preceding the date of this notice and continuing through the present date.

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses and violations are uncovered which relate back to the core nucleus of allegations set forth herein.

Violation of Labor Code Sections §§ 510, 1182.12, 1194, 1194.2, 1197, and 1197.1 – Failure to Pay All Wages Owed (Off the Clock, Time Shaving/Rounding, Reporting Time Pay, Split Shift Premiums)

Defendants violated numerous sections of the Labor Code requiring payment of wages for all hours worked with respect to Claimant and other aggrieved employee. These policies and practices resulted in Claimant and the aggrieved employees not being paid their regular, minimum, and overtime wages. Defendants failed to pay Claimant and other aggrieved employees for all hours worked at the lawful minimum, regular and overtime rates in accordance with Labor Code sections 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and local minimum wage ordinances, including but not limited to San Diego Municipal Code § 39.0107 and all other local ordinances in effect.

Specifically, Defendants required Claimant and aggrieved employees to work “off-the-clock” without pay during meal periods; Defendants failed to pay Claimant aggrieved employees for certain staff-wide meetings; Defendants required Claimant and aggrieved employees to perform work at home without pay (menu study); Defendants failed to pay overtime when on the seventh consecutive day worked by Claimant and the aggrieved employees; Defendants maintained an unlawful and non-neutral

rounding/time shaving policy and practice; Defendants failed to pay reporting time pay for shifts when employees were sent home early from a scheduled shift; and Defendants failed to pay split shift premiums for days when Claimant and the aggrieved employees were required to work two shifts in a workday. Each of these actions result in a separate Labor Code violation for which Defendants are liable for civil penalties.

First, Defendants deprived Claimant and the aggrieved employees of their minimum, regular, and overtime wages through its use of a non-neutral rounding policy (*i.e.*, time shaving). *See, Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and neutral on its face and as applied – over a period of time – in order to lawfully comply with California’s requirement that workers be paid for “all hours worked.”]; *Leyva v. Medline Indus.* (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not permit both upward and downward rounding, then the system is not neutral.”]; *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See’s Candy Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251. As illustrated by Claimant’s time records, Defendants had a practice of using *one-way rounding* (*i.e.*, time shaving) for Claimant and the aggrieved employees “clock in” time. Defendants did not round any of Claimant’s “clock out” entries. Instead, Defendants rounded in a non-neutral and unfair manner that deprived Claimant and the aggrieved employees of wages over time. Claimant is informed and believes that Defendants rounded and/or reduced the “clock in” time to match her scheduled shift time (regardless of when she actually started working) and/or rounded her time in a manner that ensured she did not work a length of time that would entitle her to a meal period or overtime. These edits to Claimant and the aggrieved employees time entries occurred within the Aloha system.

Second, at the time of hire and periodically throughout their employment, Defendants required Claimant and the aggrieved employees to memorize menus and other items (e.g., ingredients in entrees and allergy information). Claimant and the aggrieved employees were given three attempts to take a written test of the menu and other items and pass with a degree of 80% accuracy. Defendants required Claimant and the aggrieved employees to “study” for the test during their personal time and did not compensate Claimant and the aggrieved employees for this work.

Third, Defendants failed to pay Claimant and the aggrieved employees for staff meetings and “short shifts” when Claimant and the aggrieved employees were sent home due to the restaurants being “slow.” Defendants required Claimant and the aggrieved employees to attend staff meetings that were around an hour in length. Many of these meetings occurred on days when Claimant and the aggrieved employees were not scheduled to work and/or before the restaurants opened. Although some employees would clock in for these meetings, Defendants failed to compensate employees for this time. Similarly, Defendants failed to pay Claimant and the aggrieved employees for some of the times when employees worked an amount less than their scheduled shift (e.g., 45 minutes or an hour). This would usually occur when employees were scheduled to work their normal shift but were sent home shortly after arriving because there were not enough patrons (*i.e.*, the restaurant was “slow”). Although these employees were clocked in for short shift, Claimant is informed and believes that Defendants failed to pay wages for this time. As discussed below, Defendants also failed to pay reporting time pay to Claimant and the aggrieved employees when they were sent home early after working less than half of their scheduled shift.

Fourth, as discussed in further detail below, Defendants failed to pay Claimant and the aggrieved employees overtime when they worked seven consecutive days in a workweek.

Fifth, as discussed in further detail below, Defendants failed to pay split shift premiums to the aggrieved employees when they were required to work two shifts in the same day.

Finally, during the times when Claimant and the aggrieved employees were able to take a meal period, the meal period was not duty-free because it was interrupted. This resulted in Claimant and the aggrieved employees working “off the clock.”

As a result, Defendants failed to timely pay all minimum, regular and overtime wages owed to Claimant and other aggrieved employees on time each pay day. Claimant will seek all recoverable civil penalties for these off-the-clock work and failure to pay all wage violations, including, sections 558, 1197.1 and 2699.

Violation of Labor Code §§ 510 and 1194 – Failure to Pay Overtime

Defendants failed to pay Claimant and the aggrieved employees overtime at their lawful overtime rate (i.e., time and a half or double time based on their regular rate of pay) for all hours worked in excess of 8 hours in a workday, 40 hours in a workweek¹, or for any hours on any seventh consecutive day of work, or other such hours as further investigation may reveal in violation of Labor Code sections 510 and 1194 and the related sections of the applicable IWC Wage Orders

Labor Code section 510 requires [a]ny 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;” and “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;” and “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.”

As discussed above, Defendants failed to pay overtime to Claimant and the aggrieved employees as a result of their use of a non-neutral rounding policy and unlawful practice of time shaving. Claimant and the aggrieved employees were also forced to work off the clock during meal periods and to memorize Defendants menu items and other information, and were not paid for some of the mandatory staff meetings that the attended.

Even assuming Defendants’ workweek definition was valid, Defendants failed to pay overtime to Claimant and the aggrieved employees when they worked seven consecutive days in the workweek defined by Defendants. For example, Claimant worked seven consecutive days for the workweek beginning on December 1, 2019 and ending on December 7, 2019:

¹ Defendants’ workweek is defined in its Employee Handbook as “a fixed and regularly recurring period of 168 hours (seven 24-hour periods) that begins at 6:01 each Monday and ends on every Sunday at 11:59 p.m.” The workweek definition published in Defendants’ Employee Handbook does not comply with the applicable Wage Order because it is not a fixed period of 168 hours.

12/07/2019	Server	0	10:30	12:57	0.00	0.00	12.00	2.45	29.40
12/06/2019	Server	0	17:17	22:51	0.00	0.00	12.00	5.57	66.84
12/05/2019	Server	0	10:00	13:25	0.00	0.00	12.00	3.42	41.04
12/04/2019	Server	0	17:15	21:18	0.00	0.00	12.00	4.05	48.60
12/03/2019	Server	0	17:15	21:28	0.00	0.00	12.00	4.22	50.64
12/02/2019	Server	0	16:00	19:29	0.00	0.00	12.00	3.48	41.76
12/01/2019	Server	0	16:00	19:14	0.00	0.00	12.00	3.23	38.76

As Claimant's December 20, 2019 wage statement shows, she was not paid overtime for the hours she worked on December 7, 2019 (the seventh consecutive day of the workweek):

Earnings	Rate	Hours	Amount	YTD
MP Regular				36.00
OVERTIM				44.46
REGULAR	12.00	52.57	630.84	14,445.24
TIPS		0.00	925.78	26,492.75
Gross Earnings		52.57	1,556.62	41,018.45

As derivative and related violations, Defendants have also violated Labor Code sections 551, 552 and 556, which prohibit an employer from employing Claimant and aggrieved employees for seven days in a row.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 558 (\$50/\$100) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 5 of IWC Wage Order 5 – Failure to Pay Reporting Time Pay

Defendants failed to pay Claimant and the aggrieved employees reporting time pay during times when Defendants required Claimant and the aggrieved employees to work a short shift (due to a lack of customers) or work a second shift of less than two hours, in violation of section 5 of ICW Wage Order No. 5.

Section 5(a) of IWC Wage Order number 5 requires an employer to pay reporting time pay if an employee shows up for a scheduled shift and is not put to work or is furnished with less than half of the scheduled shift. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length. Section 5(C) requires an employer to pay reporting time pay if an employee is required to report to work for a second time and is furnished with less than two hours of work on the second reporting. In this situation, the employer owes the employee reporting time pay in the amount of the greater of two hours or half the scheduled shift length.

As described above, Defendants frequently sent Claimant and the aggrieved employees home early from scheduled shifts because business was slow. During these times Claimant and the aggrieved employees were furnished with less than half of their scheduled shift, but did not receive reporting time pay. Defendants also failed to pay reporting time pay to Claimant and the aggrieved employees when they were required to report to work for a second shift in a workday but were furnished with less than two hours of work on the second shift.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 558 (\$50/\$100) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 4 of IWC Wage Order 5 – Failure to Pay Split Shift Premiums

Defendants failed to pay Claimant and the aggrieved employees a split shift premium during times when Defendants required Claimant and the aggrieved employees to work two shifts in a single workday, in violation of section 4 of ICW Wage Order No. 5.

Section 4(c) of IWC Wage Order number 5 requires an employer to pay one hour of pay at the minimum wage when an employee works a split shift (i.e., split shift premium). A split shift premium is owed when an employee's work schedule "is interrupted by non-paid non-working periods" "other than bona fide rest or meal periods." IWC Wage Order 5, § 2(R).

Defendants required Claimant and the aggrieved employees to work two shifts in a workday but failed to pay the applicable split shift premium. Defendants referred to these shifts as "doubles." Claimant's time and payroll records demonstrate that she worked two shifts in a single workday but was not paid a split shift premium for those shifts. For example, on December 10, 2019, Claimant was required to work two shifts in the same workday that were separated by a three-and-a-half-hour period in between the shifts:

12/10/2019	Server	0	16:30	20:31	0.00	0.00	12.00	4.02
12/10/2019	Server	0	10:00	13:00	0.00	0.00	12.00	3.00

The non-working time between the two shifts was not meal period. Claimant was not paid a split shift premium for this day.

As another example, on September 30, 2019, Claimant worked two shifts in the same workday that were separated by a three-and-a-half-hour period:

09/30/2019	Server	0	17:00	21:14	0.00	0.00	12.00	4.23
09/30/2019	Server	0	10:30	13:33	0.00	0.00	12.00	3.05

The non-working time between the two shifts was not meal period. Claimant was not paid a split shift premium for this day.

Claimant believes that this practice of requiring split shifts and not paying the applicable split shift premiums also applied to the aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 558 (\$50/\$100) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 350 to 356 – Unlawful Tip Pooling

Claimant believes that Defendants maintained an unlawful tip pooling policy in violation of Labor Code sections 350 and 351 that applied to all aggrieved employees who earned such tips and gratuities.

Claimant alleges that the tip pooling practices were not fair and reasonable because the tips and gratuities owed under this section were not fully paid to Claimant and the aggrieved employees (despite being deducted from their hourly wages, which form the basis for a separate violation for unlawful, unauthorized deductions under Labor Code sections 221, 222 and 223).

Claimant alleges that she and the aggrieved employees were forced to share a percentage of their cash and credit card tips with the executive chef, kitchen, “back of the house” staff, and supervisors. Defendants’ tip pooling policy was unlawful because supervisors and/or employees not in the line of service also shared in the tips, to the loss of the employee who earned those tips. Defendants’ policy that servers “tip out” back of the house and kitchen staff was communicated multiple times by Defendant:

This is our guideline so that everyone is clear:

If your sales are \$600
1% kitch should be \$6
.5% Food runner \$3
2% + \$2 Bussers \$14
1% + \$2 Bar \$8

Thank you in advance for following this!
Management

Claimant believes that Defendants failed to keep accurate records of the gratuities (and failed to make the records open to inspection) in violation of Labor Code section 352 and 353.

Violation of Labor Code §§ 221 and 222 – Unlawful Deductions From Wages

Labor Code section 221 render it unlawful to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Defendants violated Labor Code section 221 by deducting amounts for “tips” from their paychecks although a percentage of those tip amounts were actually paid to other employees under Defendants’ forced tip out policy (described above).

At the end of each shift, Claimant and the aggrieved employees were paid in cash for all tips that customers left via *credit card*. The credit card tips were tracked by Defendants. Defendants did not track the cash tips. Claimant and the aggrieved employees would then be required to “tip out” other employees based on a percentage of sales. Although Claimant and the aggrieved employees were forced to pay a percentage of their tips (cash and credit card) to other employees, the full amount of the credit card tips was reported on the wage statements of Claimant and the aggrieved employees. Defendants failed to account for the percentage of the credit card tips that Claimant and the aggrieved employees were forced to give other employees. The full credit card tips (including amounts “tipped out” to others) was then deducted from the hourly wages of Claimant and the aggrieved employees.

Below is an example of this wage deduction practice on Claimant’s October 18, 2019 wage statement:

Earnings	Rate	Hours	Amount	YTD
MP Regular				36.00
OVERTIME	18.00	0.20	3.60	44.46
REGULAR	12.00	45.03	540.36	12,309.36
TIPS		0.00	1,310.42	22,616.87
Gross Earnings		45.23	1,854.38	35,006.69

Taxes	Amount	YTD
CA	58.50	1,082.05
CASDI-E	18.54	350.06
FITW	200.57	3,892.41
MED	26.89	507.59
SS	114.97	2,170.41
Taxes	419.47	8,002.52

Deductions	Amount	YTD
TIPS	1,310.42	22,616.87
UNIFORM		5.00
Deductions	1,310.42	22,621.87

Direct Deposits	Type	Account	Amount
J.P. MORGAN CHASE BANK, N.A.	C	***1866	124.49
Total Direct Deposits			124.49

As illustrated above, Claimant had gross earnings of \$1,854.38 and received only \$124.49 in net wages after the deductions. Despite being required to tip out a percentage of the \$1,310.42 in tips reported on her paycheck, the full tip amount was deducted from her hourly wages and she was also be taxed on tips that she was required to pay to other employees. This practice affected all employees who received tips from patrons.

Claimant will seek all recoverable civil penalties for each of these deduction violations, including sections 225.5 and 2699(f).

Violation of Labor Code §§ 226.7, 512, § 11 of the IWC Wage Orders – Meal Period Violations

Defendants violated Labor Code sections 226.7 and 512 and section 11 of the IWC Wage Orders, with respect to Claimant and other aggrieved employees by failing to consistently provide lawful meal periods, failing to pay meal period premiums in lieu of such compliant periods, and failing to pay meal period premiums based on the “regular rate of compensation” of Claimant and other aggrieved employees.

Defendants failed to consistently provide timely, off-duty 30-minute meal periods to Claimant and other aggrieved employees within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Claimant’s actual meal periods were often late, short, interrupted, or missed due to Defendants’ policies and practices which did not provide enough coverage for employees to take meal periods and which effectively required employees to skip, work through, or cut short meal periods on certain occasions. Claimant also believes that Defendants altered the time entries for her and the aggrieved employees so that based on the length of the altered shift length, Claimant and the aggrieved employees would not be entitled to a meal period. Claimant is informed, believes and alleges that these violations are evident based on the records maintained by Defendants and/or will be revealed through records evidencing Defendants’ edits to Claimant and the aggrieved employees’ time records.

When Defendants did not provide fully-compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. Claimant’s wage statements reveal that Claimant did not receive a meal period premium during the statutory period, despite receiving non-compliant meal periods. Defendants also used an unlawful on-duty meal period agreement to deprive Claimant and the aggrieved employees of meal periods and/or meal period premium payments. Claimant is informed, believes and alleges that Defendants’ policy and practice of not paying meal period premiums is a matter of common corporate policy and payroll administration such that it applies and affected all other aggrieved employees. To the extent

Defendants paid *any* meal period premiums (in lieu of providing compliant meal periods), Claimant is informed, believes and alleges that Defendants did not pay such premiums at each employee's respective "regular rate of compensation."

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 226.7, 516, § 12 of the IWC Wage Orders – Rest Period Violations

Defendants violated Labor Code sections 226.7, 516 and section 12 of the applicable IWC Wage Orders with respect to Claimant and other aggrieved employees by failing to provide lawful rest periods or rest period premiums at the regular rate of compensation in lieu of such compliant periods. Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order.

Claimant and other aggrieved employees routinely worked through rest periods, which were neither authorized or permitted. Given the work environment and demands of the restaurant, Claimant and the aggrieved employees simply were unable to take their 10- minute rest breaks. During the times when Claimant and the aggrieved employees did have time to take a rest period, they were prohibited by Defendants' written policies from leaving the premises during a rest period. In other words, Defendants unlawfully imposed constraints on how Claimant and the aggrieved employees could spend their rest periods. Defendants' Employee Handbook stated that employees were "not allowed to leave the premises during rest periods, and they are encouraged to use the Company's 'lunch room' for their rest period." Defendants' policy and practice of controlling where Claimant and the aggrieved employees were allowed to take a rest period (i.e., on premises), among other factors, rendered the rest period subject to Defendants' control. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Claimant alleges that these violations were common and widespread, due to Defendants' written and stated policies and practices and due to the demanding nature of working in a busy restaurant.

On those occasions when Defendants did not provide a fully-compliant rest period to Claimant or other aggrieved employees, Defendants failed to pay Claimant and other aggrieved employees a rest period premium in violation of Labor Code section 226.7. Defendants never paid a rest period premium to Claimant during her employment, despite her entitlement to compliant rest periods or premiums in lieu of such rest periods.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 2802 – Failure to Reimburse Necessary Expenses

Defendants failed in its affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants requires its employees to use their personal devices (cell phone, laptop) and internet/data for work-related purposes. Claimant and the aggrieved employees were required and instructed by Defendants to download the Hot Schedules app on their personal cell phones or access it from home on a personal device. Hot Schedules was used by Defendants to communicate work schedules and changes to the work schedule and was used by Claimant and the aggrieved employees to cover shifts and seek coverage for their shifts. Other non-exempt employees (e.g., delivery drivers) were required to use their personal cell phone to communicate with customers and Pizza Nova regarding deliveries and for navigation to different locations. In direct consequence of their remote work job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not reimburse as a matter of policy and practice. At all relevant times, Defendants was required to comply with the reimbursement mandate of Labor Code section 2802.

It is a matter of undisputed law that California employers must reimburse actual costs incurred and a reasonable percentage of *reoccurring costs* that are necessarily incurred by an employee at work. *See generally Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140. Defendants were fully aware of the nature of necessary costs being incurred by Claimant and the aggrieved employees, particularly in light of its multiple communications to Claimant and the aggrieved employees instructing them to download and use Hot Schedules. To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." In other words, if—as here—employees incur "necessary expenses" or "losses" for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney's fees and costs of suit.

Violation of Labor Code §§ 204 and 204b – Failure to Timely Pay Wages Owed Each Payday

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages and premiums owed on time each pay period.

Because Defendants failed to pay all regular and overtime wages, and meal and rest period premiums in each pay period in which such wages were earned, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods.

As explained above, Defendants underpaid Claimant and other aggrieved employees or otherwise failed to pay at the lawful rate for all hours worked and premiums earned and owed. As a result, Defendants is separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Violation of Labor Code §§ 201 through 203 – Failure to Pay Amounts Due Upon Separation

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to Claimant and other aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Because Defendants failed to pay all wages and premiums owed to Claimant and other aggrieved employees during their employment, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203. Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

As explained above, Defendants routinely underpaid Claimant and other aggrieved employees and otherwise failed to pay at the lawful rate for all hours worked (including overtime and premiums at the regular rate of pay/compensation), premiums, split shift premiums, and reporting time pay, each relevant pay period.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 246 and 246.5 – Failure to Provide Paid Sick Leave and Notice of Balance/Accruals

Defendants violated Labor Code section 246 because they failed to provide Claimant and the aggrieved employees with any paid sick leave in the manner specified under this section. To illustrate, despite calling into work sick multiple times and informing management that she was sick, Claimant was not paid any paid sick leave.

To the extent Defendants assert that they provided Claimant and the aggrieved employees with any paid sick leave, Defendants violated Labor Code section 246 because they failed to provide Claimant and the aggrieved employees written notice that set forth the amount of paid sick leave available on itemized wage statements under section 226 or in a “separate writing provided on the designated pay date with the employee’s payment of wages.” Labor Code section 246(i) requires employers to provide employees with written notice every pay period “that sets forth the amount of paid sick leave available, or paid time off in lieu of sick leave.” The notice can be either on the employees’ wage statements or a separate written notice. Defendants failed to provide Claimant and the aggrieved employees with the required written notice each pay period and is liable for civil penalties accordingly.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 226 – Failure to Provide Accurate Itemized Wage Statements

Defendants violated Labor Code section 226 requiring accurate, itemized wage statements with respect to Claimant and other aggrieved employees by failing to meet the requirements of the statute. Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.²

First, during any time when Defendants did pay a meal period premium, the total hours worked amount on wage statements for Claimant and other aggrieved employees was incorrect in violation Labor Code section 226(a)(2). These wage statements included the meal premium in the total which did not reflect the actual total hours worked by employees.

² See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”; see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

Second, Defendants violated Labor Code section 226 because the wage statements did not correctly reflect the wages and hours of Claimant and other aggrieved employees. As described throughout this notice, Defendants engaged in a pattern of time shaving and requiring employees to work “off the clock” for various tasks, mandatory meetings, and during meal periods, and failed to properly pay overtime, which deprived Claimant and the aggrieved employees of minimum, regular, and overtime wages. Defendants also failed to pay split shift premiums and reporting time pay. As a result, the wage statement issued by Defendants listed the incorrect gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period with the number of hours worked at each hourly rate by the employee. These wage statement defects occurred with respect to Claimant and all other aggrieved employees in violation of Labor Code sections 226(a) (1), (2), (5), and (9).

Third, Defendants failed to pay meal and rest period premiums at the lawful regular rate of compensation rendering the wage statements an inaccurate reflection of the wages and hours of Claimant and other aggrieved employees. Because of the failure to pay meal and rest premiums, Defendants thus listed the incorrect gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period with the number of hours worked at each hourly rate by the employee. These wage statement defects occurred with respect to Claimant and all other aggrieved employees in violation of Labor Code sections 226(a) (1), (2), (5), and (9).

As discussed in detail above, the wage statements provided to Claimant and other aggrieved employees include incorrect hourly rates, do not accurately itemize all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, nor do they state the accurate gross and net wages owed or earned or total hours worked. As a result, Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information, though Defendants’ facial violation of Labor Code section 226 requires application of the civil penalties applicable thereto under *Lopez*. These wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Violation of Labor Code § 1174 – Failure to Maintain Accurate Payroll Records.

Because of the violations set forth in this notice, including Defendants’ failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay and its pattern of altering employees’ time records, Defendants violated Labor Code section 1174 and the IWC Wage Orders, including section 7 of the IWC Wage Order by failing to maintain accurate payroll records showing daily hours worked, all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants is liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Individual Liability

Claimant hereby provides notice of her intent to pursue all damages, penalties, remedies and any such liability pursuant to Labor Code section 558.1 and other applicable sections, which extends liability to any person acting on behalf of the employer, including owners, directors, officers, and managing agents of PIZZA NOVA - HARBOR DRIVE, INC.; PIZZA NOVA SAN MARCOS, LLC; PIZZA NOVA SOLANA BEACH, LLC; PIZZA NOVA NEWPORT BEACH, LLC and related entities. Such persons include JOHN FREIS, CHARLES MUIRHEAD, and KELLY BOWIE and other owner, director, officer, or agent of the Pizza Nova entities.

Attorneys' Fees and Costs

Claimant was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendant. Claimant has thereby incurred attorneys' fees and costs, which she is entitled to receive on all causes of action under Labor Code section 2699(g).

CONCLUSION

Claimant requests the LWDA initiate enforcement for the violations described in this letter. If the LWDA does not pursue enforcement, Claimant will pursue representative claims on behalf of the State of California and the aggrieved employees and will seek all remedies available for violations of the Labor Code and the IWC Wage Orders, including attorneys' fees, costs, interest, and all available penalties set forth in Labor Code section 2699 and all other applicable sections of the Labor Code.

Thank you for your attention to this matter.

Sincerely,



Nicholas J. Ferraro, Esq.

Cc Olga Savage
Counsel for Pizza Nova
Olga.Savage@procopio.com

Bcc Tara Beane (via email)