

JOSE MACIAS, JR., Bar No. 265033
jose@maciasrodriguez.com
HECTOR J. RODRIGUEZ, Bar No. 305446
hector@maciasrodriguez.com
TRAVIS M. ADAMS, Bar No. 303447
travis@maciasrodriguez.com
MACIAS RODRIGUEZ LLP
1550 The Alameda, Suite 332
San Jose, CA 95126
Telephone: 408.455.1243

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA

JEFERSON GARCIA, an individual;
WILSON GARCIA, an individual; and on
behalf of other members of the general
public similarly situated and other aggrieved
employees,

Plaintiffs,

v.

RUSTIC BAKERY, INC., a California
corporation; RUSTIC CAFÉ, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: SCV-267534

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES, INJUNCTIVE
RELIEF, AND CIVIL PENALTIES**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Failure to Pay Meal Period Premiums
4. Failure to Pay Rest Period Premiums
5. Failure to Pay Reporting Time Pay
6. Failure to Provide Accurate Itemized Wage Statements
7. Failure to Pay All Wages Due at Separation
8. Failure to Reimburse Necessary Business Expenses
9. Unfair Competition
10. Private Attorneys General Act

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
12/9/2020 7:25 PM
Arlene D. Junior, Clerk of the Court
By: Angela Rubiano, Deputy Clerk

Plaintiffs JEFERSON GARCIA and WILSON GARCIA (“Plaintiffs”), as individuals, and on behalf of other members of the general public similarly situated and other aggrieved employees, allege and complain against RUSTIC BAKERY, INC. (“Rustic Bakery”), a California corporation, RUSTIC CAFE, INC. (“Rustic Café”), a Delaware corporation, and DOES 1 through 10, inclusive, (collectively referred to as “Defendants”):

INTRODUCTION

1. Plaintiffs bring this Class and Representative Action Complaint on behalf of themselves, other aggrieved employees pursuant to the California Labor Code Attorneys General Act of 2004 (“PAGA”), and all other similarly situated current and former non-exempt hourly employees who work or worked as food preparers and other bakery-related occupations in California for Defendants RUSTIC BAKERY, INC., a California corporation, RUSTIC CAFE, INC., a Delaware corporation, and DOES 1 through 10, inclusive.

2. This Class and Representative Action Complaint involves Defendants' systematic failure to comply with the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Orders, including: IWC Wage Order No. 1, which regulates the manufacturing industry, including non-retail bakeries; IWC Wage Order No. 5, which regulates the public housekeeping industry, including bakeries with tables for patrons' use; and IWC Wage Order No. 7, which regulates the mercantile industry, including retail bakeries.

3. At all times relevant to this Class and Representative Action Complaint, Defendants employed Plaintiffs in California as food preparers and other bakery-related occupations and classified them as non-exempt hourly employees.

4. At all times relevant to this Class and Representative Action Complaint, Defendants employed many other employees as food preparers and other bakery-related occupations in California and classified them as non-exempt hourly employees.

5. Beginning at least four (4) years prior to the filing of this Class and Representative Action Complaint and continuing through the present (the “Class Period”), Defendants implemented uniform, standardized wage and hour policies and practices that applied to Plaintiffs and other bakery-related employees working as non-exempt hourly employees in California.

6. In implementing these uniform, standardized wage and hour policies and practices, which applied to Plaintiffs and other similarly situated current and former non-exempt employees who work or worked for Defendants in California as food preparers and other bakery-related occupations during the Class Period, Defendants systematically violated the California Labor Code and IWC Wage Orders Nos. 1, 5, and 7 by: (1) failing to pay minimum wages; (2) failing to pay overtime wages; (3) failing to pay meal period premiums; (4) failing to pay rest period premiums; (5) failing to pay reporting time pay; (6) failing to provide accurate itemized wage statements; (7) failing to pay all wages due at separation; (8) failing to reimburse necessary business expenses; and (9) engaging in unfair competition.

7. Seeking redress for Defendants' systematic violations of California's wage and hour laws, Plaintiffs, on behalf of themselves, other aggrieved employees pursuant to the PAGA, and all other similarly situated current and former non-exempt hourly employees who work or worked for Defendants in California as food preparers and other bakery-related occupations during the Class Period, bring this Class and Representative Action Complaint for the recovery of unpaid wages, statutory penalties, equitable relief, and civil penalties under the California Labor Code, IWC Wage Order Nos. 1, 5, and 7, and the California Business & Professions Code.

JURISDICTION AND VENUE

8. Plaintiffs, on behalf of themselves, other aggrieved employees pursuant to the PAGA, and all other similarly situated current and former non-exempt hourly employees who work or worked for Defendants in California as food preparers and other bakery-related occupations during the Class Period, bring this Class and Representative Action Complaint for the recovery of unpaid wages, statutory penalties, equitable relief, and civil penalties under California Labor Code sections 201 to 204, 226, 226.7, 510, 512, 1182.12, 1194 et seq., 1197, 1198, 2802, IWC Wage Order Nos. 1, 5, and 7, and California Business & Professions Code section 17200 et. seq.

9. Plaintiffs bring the class component of this Class and Representative Action Complaint pursuant to California Code of Civil Procedure section 382 because: the consent of all parties cannot be obtained; a question of common or general interest exists; the parties are numerous; and it is impractical to bring all the parties before the court.

10. The monetary damages and restitution sought by Plaintiffs, on behalf of themselves and other similarly situated employees who work or worked for Defendants in California as food preparers and other bakery-related occupations during the Class Period, exceed the minimal jurisdiction limits of the Superior Court of California and will be established according to proof at trial.

11. This Court has original jurisdiction over this Class and Representative Action Complaint pursuant to Article VI, Section 10, of the California Constitution, which grants the Superior Court of California “original jurisdiction in all other causes,” except those causes given by statute to other courts. The statutes under which Plaintiffs allege the causes of action in this Class and Representative Action Complaint do not specify any other jurisdictional basis.

12. This Court has personal jurisdiction over Defendants because they are residents and/or conduct business in California.

13. Venue is proper in the County of Sonoma pursuant to California Code of Civil Procedure section 395.5. At all times relevant to this Class and Representative Action Complaint, the principal place of business for Defendants RUSTIC BAKERY, INC. and RUSTIC CAFE, INC., was and is located in the County of Sonoma, specifically: 3902 Cypress Drive, Petaluma, California 94945.

PARTIES

14. At all times relevant to this Class and Representative Action Complaint, Plaintiff JEFERSON GARCIA worked as a food preparer and in other non-exempt bakery-related occupations for Defendants RUSTIC BAKERY, INC. and RUSTIC CAFE, INC. in California during the Class Period. Defendants RUSTIC BAKERY, INC. and RUSTIC CAFE, INC. employed Plaintiff JEFERSON GARCIA from July 2017 to March 2020.

15. At all times relevant to this Class and Representative Action Complaint, Plaintiff WILSON GARCIA worked as a food preparer and in other non-exempt bakery-related positions for Defendants RUSTIC BAKERY, INC. and RUSTIC CAFE, INC. in California during the Class Period. Defendants RUSTIC BAKERY, INC. and RUSTIC CAFE, INC. employed Plaintiff WILSON GARCIA from February 2019 to March 2020.

16. Defendant RUSTIC BAKERY, INC. is a California Corporation and operates as a

1 manufacturer, producer, and distributor of baked goods. Defendant RUSTIC BAKERY, INC.'s
2 principal place of business is located at: 3902 Cypress Drive, Petaluma, California 94945.

3 17. Defendant RUSTIC CAFE, INC. is a Delaware Corporation and operates as a
4 restaurant selling its own baked goods. Defendant RUSTIC BAKERY, INC.'s principal place of
5 business is located at: 3902 Cypress Drive, Petaluma, California 94945.

6 18. The true names and capacities of defendants DOES 1 through 10 inclusive, whether
7 corporate, associate, individual, or otherwise, are unknown to Plaintiffs and Plaintiffs therefore sue
8 these DOE defendants by fictitious names. On information and belief, each of the DOE defendants is
9 liable for the unlawful acts alleged in this Class and Representative Action Complaint and proximately
10 caused the injuries and damages to Plaintiffs. Once Plaintiffs ascertain the true names and capacities
11 of these DOE Defendants, Plaintiffs will seek leave of court to file an amended pleading.

12 19. At all times relevant to this Class and Representative Action Complaint, Defendants
13 were the "employer" of Plaintiffs within the meaning of all applicable California laws and statutes.

14 20. At all times relevant to this Class and Representative Action Complaint, each of the
15 Defendants were the agents, partners, joint venturers, joint employers, representatives, servants,
16 employees, successors-in-interest, co-conspirators and/or assigns, of each of the other Defendants.

17 21. At all times relevant to this Class and Representative Action Complaint, each of the
18 Defendants were acting within the course and scope of their authority as such agents, partners, joint
19 venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or
20 assigns, and all acts or omissions alleged in this Class and Representative Action Complaint were
21 committed with the ratification, knowledge, permission, encouragement, authorization and/or consent
22 of each alleged DOE Defendant.

23 22. Plaintiffs further allege Defendants directly or indirectly controlled or affected the
24 working conditions, wages, working hours, and terms of employment of Plaintiffs and Class Members
25 so as to make each of the Defendants liable under the statutory provisions set forth in this Class and
26 Representative Action Complaint as joint employers.

27 //

28 //

CLASS ALLEGATIONS

23. Plaintiffs bring this Class and Representative Action Complaint on behalf of themselves and all other similarly situated current and former non-exempt hourly employees who work or worked for Defendants in California as food preparers and other bakery-related occupations during the Class Period and who were affected by Defendants' violations of the California Labor Code, IWC Wage Order Nos. 1, 5, and 7, and Business and Professions Code section 17200 et seq.

24. Plaintiffs bring the class component of this Class and Representative Action Complaint pursuant to California Code of Civil Procedure section 382 because: the consent of all parties cannot be obtained; a question of common or general interest exists (as defined below); the parties are numerous; and it is impractical to bring all the parties before the court.

25. **Relevant Time Period:** The Relevant Time Period is the time period beginning four years prior to the filing of this Class and Representative Action Complaint until the Court enters judgment.

26. **Class Definitions:**

a. **Minimum Wage Class:** All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who were subject to Defendants' timekeeping policies/practices during the Relevant Time Period.

b. **Overtime Class:** All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who worked more than eight hours per workday and/or forty hours per workweek and who were subject to Defendants' timekeeping policies and practices during the Relevant Time Period.

c. **Meal Period Class:** All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who worked at least one shift in excess of five (5.0) hours during the Relevant Time Period.

d. **Rest Period Class:** All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who worked at least one shift in excess of three and one-half (3.5) hours during the Relevant Time Period.

e. **Reporting Time Class**: All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California, and who were required to report to work, and did work or worked less than half of their usual or scheduled day's work, but were paid less than half of their usual or scheduled wages for a full day's work.

f. **Wage Statement Penalty Class**: All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who received a wage statement from Defendants during the period beginning at least one year before the filing of this Class and Representative Action Complaint until the court enters final judgment.

g. **Waiting Time Penalty Class**: All of Defendants' non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who separated from their employment with Defendants during the period beginning three years before the filing of this Class and Representative Action Complaint until the court enters final judgment.

h. **Business Expenses Reimbursement Class**: All of Defendants' current and former non-exempt employees who work or worked as food preparers and other bakery-related occupations in California and who incurred necessary business expenses during their employment with Defendants and who were not reimbursed by Defendants for those expenses during the Relevant Time Period.

i. **UCL Class**: All members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Reporting Time Class; (vi) Wage Statement Penalty Class; (vii) Waiting Time Penalty Class; and (viii) Business Expenses Reimbursement Class.

27. Members of the Classes described above will be collectively referred to as "Class Members" in this Class and Representative Action Complaint.

28. **Numerosity**: The Class Members are so numerous that joinder of all Class Members is impracticable. While Plaintiffs do not currently know the exact number of Class Members, Plaintiffs are informed and believe, and thereupon allege that the actual number exceeds the minimum required for numerosity under California law. The total number and identities of the Class Members can be

1 readily ascertained by inspecting Defendants' employment records.

2 29. **Commonality and Predominance:** Common legal and factual questions exist for all
3 Class Members and predominate over any questions that affect only individual Class Members. Some
4 of these common legal and factual questions are:

5 a. Whether Defendants had a corporate policy and/or practice of failing to pay
6 their hourly non-exempt employees who work or worked as food preparers and other bakery-related
7 occupations in California for all hours worked;

8 b. Whether Defendants failed to pay minimum wages to Plaintiffs and other
9 Minimum Wage Class Members for all hours worked;

10 c. Whether Defendants failed to pay overtime wages to Plaintiffs and other
11 Overtime Class Members for all overtime hours worked;

12 d. Whether Defendants willfully failed to pay wages, including minimum and
13 overtime wages, without abatement or reduction in accordance with the California Labor Code and
14 IWC Wage Order Nos. 1, 5, and 7;

15 e. Whether Defendants required Plaintiffs and other Overtime Class Members
16 to work over eight (8) hours per workday and/or over forty (40) hours per workweek and failed to pay
17 the legally required overtime wages to Plaintiffs and other Overtime Class Members;

18 f. Whether Defendants had a corporate policy and/or practice of failing to pay
19 Plaintiffs and other Meal Period Class Members and/or other Rest Period Class Members premium
20 pay for non-compliant meal and rest periods (short, late, interrupted, and/or missed altogether) in
21 violation of California law;

22 g. Whether Defendants deprived Plaintiffs and other Meal Period Class
23 Members and/or other Rest Period Class Members of meal and/or rest periods or required Plaintiffs
24 and other Meal Period Class Members and/or other Rest Period Class Members to work during meal
25 and/or rest periods without compensation;

26 h. Whether Defendants had a corporate policy and/or practice of failing to pay
27 Plaintiffs and other Reporting Time Class Members less than half of their wages for a usual or
28 scheduled full day's work when Plaintiffs and other Reporting Time Class Members were required to

1 report to work and in fact reported to work, but did not work or worked less than half of their usual or
2 scheduled day's work;

3 i. Whether Defendants willfully failed to timely pay all wages due to Plaintiffs
4 and other Waiting Time Penalty Class Members;

5 j. Whether Defendants willfully failed to pay all wages due to Plaintiffs and
6 other Waiting Time Penalty Class Members within the required time upon their separation—either
7 discharge or resignation;

8 k. Whether Defendants willfully failed to provide accurate, itemized wage
9 statements to Plaintiffs and Wage Statement Class Members as required by California law;

10 l. Whether Defendants failed to reimburse Plaintiffs and other Business
11 Expenses Reimbursement Class Members for necessary business-related expenses and costs;

12 m. Whether Defendants had a corporate policy and/or practice of deducting
13 from the wages of Plaintiffs and other Minimum Wage Class Members for reasons not authorized by
14 Labor Code section 221 and the applicable IWC Wage Order.

15 n. Whether Defendants engaged in unfair business practices in violation of
16 California Business & Professions Code section 17200 et seq.;

17 o. Whether Plaintiffs and Class Members can recover compensatory damages
18 pursuant to the California Labor Code and IWC Wage Order Nos. 1, 5, and 7; and

19 p. The appropriate amount of damages, restitution, and/or monetary penalties
20 resulting from Defendants' violations of California law.

21 30. **Typicality:** Plaintiffs' claims are typical of the claims of other Class Members because
22 of Defendants' policies and/or practices of failing to comply with the California Labor Code, IWC
23 Wage Order Nos. 1, 5, and 7, and the California Business and Professions Code, as alleged in this
24 Class and Representative Action Complaint.

25 31. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each Class
26 Member, with whom they have a well-defined community of interest and typicality of claims, as
27 alleged in this Class and Representative Action Complaint. Plaintiffs have no interest that is
28 antagonistic to other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in

1 the rules governing class action discovery, certification, and settlement. Plaintiffs have and will
2 continue to incur costs and attorneys' fees that have and will necessarily be expended for the
3 prosecution of this Class and Representative Action Complaint and for the substantial benefit of each
4 Class Member.

5 32. **Superiority:** A class action is superior to other available methods for the fair and
6 efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

7 33. **Public Policy Considerations:** Certification of this Class and Representative Action
8 Complaint as a class action will advance public policy objectives. Employers throughout California
9 regularly violate employment and labor laws. Current employees however are often reluctant to assert
10 their rights individually because of fear of direct and/or indirect retaliation by their employers. Class
11 actions, on the other hand, provide anonymity to Class Members who are not specifically named as
12 Plaintiffs, which in turn facilitates the vindication of their rights without fear of direct and/or indirect
13 retaliation by their employers.

14 **GENERAL ALLEGATIONS**

15 **Failure to Pay Minimum Wages**

16 34. At all times relevant to this Class and Representative Action Complaint, Defendants
17 Rustic Bakery and Rustic Café had a policy and/or practice of failing to pay Plaintiffs and other
18 Minimum Wage Class Members minimum wages for all hours worked as required by California law.
19 Plaintiffs and other Minimum Wage Class Members therefore worked numerous off-the-clock hours
20 for Defendant Rustic Bakery and Rustic Café during the Class Period without receiving any
21 compensation.

22 35. Defendants Rustic Bakery and Rustic Café had a policy and/or practice of requiring
23 Plaintiffs and other Minimum Wage Class Member to work off-the-clock hours without receiving any
24 compensation.

25 36. First, Defendants Rustic Bakery and Rustic Café had a policy and/or practice of failing
26 to provide Plaintiffs and other Minimum Wage Class Members with compliant meal periods.
27 Specifically, Defendants Rustic Bakery and Rustic Café had a policy and/or practice of understaffing
28 its business locations to maximize profits. In lacking sufficient numbers of employees to handle the

1 requisite workload and to provide its workforce with sufficient meal period coverage, Defendants
2 regularly failed to provide them with the legally required opportunities to enjoy compliant meal
3 periods. For example, Defendants regularly required Plaintiffs and other Minimum Wage Class
4 Members to return to work during their meal periods without registering back into the time clock in
5 order to complete various work-related tasks, such as: (1) correcting errors in orders; (2) adding items
6 to orders; and/or (3) assisting with orders that required immediate completion. These interruptions
7 typically lasted between five (5) to ten (10) minutes, but Defendants Rustic Bakery and Rustic Café
8 never compensated Plaintiffs and other Minimum Wage Class Members for this time worked off the
9 clock.

10 37. Second, because Defendants Rustic Bakery and Rustic Café only had a single time
11 clock at their facilities, Plaintiffs and other Minimum Wage Class Members regularly had their meal
12 periods cut short from the legally-required 30 minutes of time while they waited in line to clock back
13 into work. Because Plaintiffs and other Minimum Wage Class Members took their meal break at the
14 same time, Plaintiffs and other Minimum Wage Class Members spent numerous minutes waiting in
15 line to clock back into work from their meal periods, which resulted in shortened meal periods without
16 receiving compensation for the time spent waiting in lines.

17 38. Third, because Defendants Rustic Bakery and Rustic Café only had a single time clock
18 at their facilities, Plaintiffs and other Minimum Wage Class regularly waited in line to clock into work
19 at the beginning of their shifts. Because Plaintiffs and other Minimum Wage Class Members often
20 clocked into the work at the same time at the start of their shifts, Plaintiffs and other Minimum Wage
21 Class Members spent numerous minutes waiting in lines to clock into work at the beginning of their
22 shifts without receiving any compensation for the time spent waiting in lines.

23 39. Fourth, to minimize payroll costs, Defendants Rustic Bakery and Rustic Café required
24 certain employees, including “Lead” employees, who were responsible for closing down the shift and
25 preparing the facilities for the next shift, to clock out after working eight (8) hours and continue
26 working off the clock. Defendants did not pay these Minimum Wage Class Members compensation
27 for this time worked off-the-clock.

28 40. Fifth, Defendants Rustic Bakery and Rustic Café had a policy and/or practice of failing

1 to pay Plaintiff and other Minimum Wage Class Members for time worked onboarding and attending
2 employee orientation training. Defendants Rustic Bakery and Rustic Café failed to pay Plaintiffs and
3 other Minimum Wage Class Members for time worked performing the following activities: (1) filling
4 out paperwork after being hired; (2) training on how to use Defendant Rustic Bakery's and Rustic
5 Café's time clocks; and (3) training on Defendant Rustic Bakery's and Rustic Café's work practices
6 and expectations.

7 41. Sixth, Defendants Rustic Bakery and Rustic Café had a policy and/or practice of
8 making unlawful deductions from Plaintiffs' and other Minimum Class Members' wages. Specifically,
9 Defendants deducted the costs of a uniform deposits from Plaintiff's and other Minimum Wage Class
10 Members' final paychecks. These deductions often resulted in Plaintiffs and other Minimum Wage
11 Class Members from receiving minimum wages for all hours worked in violation of California law.

12 **Failure to Pay Overtime Wages**

13 42. At all times relevant to this Class and Representative Action Complaint, Defendants
14 Rustic Bakery and Rustic Café had a policy and/or practice of failing to pay all overtime compensation
15 owed to Plaintiffs and other Overtime Class Members as required by California law.

16 43. Defendants Rustic Bakery and Rustic Café has a policy and/or practice of failing to pay
17 Plaintiffs and other Overtime Class Members all overtime compensation for all hours Plaintiffs and
18 other Overtime Class Members worked in excess of eight (8) hours in a workday and/or in excess of
19 forty (40) hours in a workweek. Furthermore, Defendants also consequently failed to pay all double
20 time compensation owed to Plaintiffs and other Overtime Class Members for all hours Plaintiffs and
21 other Overtime Class Members worked in excess of twelve (12) hours in a workday.

22 44. Defendant Rustic Bakery and Rustic Café failed to pay all overtime and double time
23 compensation owed to Plaintiffs and other Overtime Class Members for four reasons: First, as alleged
24 above, Defendants Rustic Bakery and Rustic Café had policy and/or practice of regularly interrupting
25 Plaintiffs' and other Overtime Class Members' meal periods without providing them compensation
26 for the time worked off-the-clock. Second, because Defendants Rustic Bakery and Rustic Café only
27 had a single time clock at their facilities, Plaintiffs and other Overtime Class Members spent numerous
28 minutes waiting in line to clock back into work from their meal periods without receiving

1 compensation for the time worked off-the-clock. Third, because Defendants Rustic Bakery and Rustic
2 Café only had a single time clock at their facilities, Plaintiffs and other Overtime Class Members spent
3 numerous minutes waiting in line to clock into work at the start of their shifts without receiving
4 compensation for the time spent waiting in lines. Fourth, Plaintiffs and other Overtime Class Members
5 spent numerous minutes performing post-shift activities after clocking out at the end of their shift.
6 Fifth, Defendants had a policy and/or practice of failing to pay Plaintiffs and other Overtime Class
7 Members for time worked onboarding and attending employee orientation training

8 45. Because of these five policies and/or practices, Defendants Rustic Bakery and Rustic
9 Café failed to pay Plaintiffs and other Overtime Class Members all overtime compensation for all
10 hours Plaintiffs and other Overtime Class Members worked in excess of eight (8) hours in a workday
11 and/or in excess of forty (40) hours in a workweek. Furthermore, Defendants Rustic Bakery and Rustic
12 Café also failed to pay Plaintiffs and other Overtime Class Members all double time compensation for
13 all hours Plaintiffs and other Overtime Class Members worked in excess of (12) hours in a workday.

14 **Failure to Pay Premium Pay for Non-Compliant Meal Periods**

15 46. At all times relevant to this Class and Representative Action Complaint, Defendants
16 Rustic Bakery and Rustic Café had a policy and/or practice of failing to provide Plaintiffs and other
17 Meal Period Class Members with compliant meal periods.

18 47. At all times relevant to this Class and Representative Action Complaint, Defendants
19 Rustic Bakery and Rustic Café also had a policy and/or practice of failing to provide Plaintiffs and
20 other Meal Period Class Members with meal period premium pay when Defendants Rustic Bakery
21 and Rustic Café failed to provide Plaintiffs and other Meal Period Class Members with compliant meal
22 periods, as required by California law.

23 48. As alleged above, Defendants Rustic Bakery and Rustic Café have policy and/or
24 practice of consistently understaffing locations, which resulted in a lack of meal break coverage and
25 prevented Plaintiffs and other Meal Period Class Members from taking all timely, complete, and
26 uninterrupted meal periods. Furthermore, Plaintiffs and Meal Period Class Members had to wait for
27 management to authorize them to take their meal periods. Because of Defendants Rustic Bakery's and
28 Rustic Café's practices and/or policies, Plaintiff and other Meal Period Class Members: (1) worked

1 through part or all of their meal periods; (2) had their meal periods interrupted for as much as five to
2 ten minutes by management to correct errors in orders, add items to orders, or help with orders that
3 needed to be completed immediately; (3) had their meal periods shortened because of time spent
4 waiting in lines to clock back into work; and/or (4) waiting extended periods of time before being
5 allowed to take “late” meal periods.

6 49. On information and belief, Defendants Rustic Bakery and Rustic Café also failed to
7 provide Plaintiffs and other Meal Period Class Members with second 30-minute meal periods on days
8 that they worked in excess of ten (10) hours in one day.

9 50. Defendants Rustic Bakery and Rustic Café knew or should have known that, as result
10 of their policies and practices, including understaffing their facilities, the layout of their facilities, and
11 the number of time clocks at their facilities, that they failed to provide Plaintiffs and other Meal Period
12 Class Members with timely and compliant first meal periods and second meal periods on days when
13 Plaintiffs and other Meal Period Class Members worked more than ten (10) hours in workday.

14 51. Defendants Rustic Bakery and Rustic Café also knew or should have known that they
15 did not pay Plaintiffs and other Meal Period Class Members meal period premium pay for non-
16 compliant first meal periods and for missed second meal periods.

17 **Failure to Pay Premium Pay for Non-Compliant Rest Periods**

18 52. At all times relevant to this Class and Representative Action Complaint, Defendants
19 Rustic Bakery and Rustic Café had a policy and/or practice of failing to provide Plaintiffs and other
20 Rest Period Class Members with compliant rest periods.

21 53. At all times relevant to this Class and Representative Action Complaint, Defendants
22 Rustic Bakery and Rustic Café also had a policy and/or practice of failing to provide Plaintiffs and
23 other Rest Period Class Members with rest period premium pay when Defendants Rustic Bakery and
24 Rustic Café failed to provide Plaintiffs and other Rest Period Class Members with compliant rest
25 periods.

26 54. As with meal periods, Defendants Rustic Bakery and Rustic Café’s policies and
27 practices of understaffing its facilities consistently resulted in insufficient rest period coverage to
28 permit Plaintiffs and other Rest Period Class Members with the opportunities to take rest periods as

1 required by California law. Furthermore, Plaintiffs and other Rest Period Class Members could not
2 take rest periods on their own volition and had to wait for management to authorize them to take them.
3 Because of the pressure to meet warehouse demands, management often prevented Plaintiffs and other
4 Rest Period Class Members from taking all complete, uninterrupted, and/or timely (10) minute rest
5 periods.

6 55. Defendants Rustic Bakery and Rustic Café failed to pay Plaintiffs and other Rest Period
7 Class Members rest period premium pay on days that Defendants Rustic Bakery and Rustic Café failed
8 to provide Plaintiffs and other Rest Period Class Members with compliant rest periods as required by
9 California law.

10 **Failure to Pay Reporting Time Pay**

11 56. Defendants Rustic Bakery and Rustic Café had a policy and/or practice of failing to
12 pay Plaintiffs and other Reporting Time Class Members appropriate reporting time pay as required by
13 California.

14 57. On days when Defendants Rustic Bakery and Rustic Café required Plaintiffs and other
15 Reporting Time Class Members to work and when Plaintiffs and other Reporting Time Class Members
16 did in fact work, but were not put to work for at least half of their usual or scheduled day's work,
17 Defendants Rustic Bakery and Rustic Café failed to pay Plaintiffs and other Reporting Time Class
18 Members for at least half of Plaintiffs' and other Reporting Time Class Members' usual or scheduled
19 day's wages.

20 58. On days when Defendants Rustic Bakery and Rust Café required Plaintiffs and other
21 Reporting Time Class Members to work and Plaintiffs and other Reporting Time Class Members did
22 not work, Defendants Rustic Bakery and Rustic Café failed to pay Plaintiff and other Reporting Time
23 Class Members for at least two hours of work at their regular rate of pay.

24 **Failure to Provide Compliant Wage Statements and Maintain Required Payroll Records**

25 59. Because Defendants Rustic Bakery and Rustic Café had a policy and/or practice of
26 failing to pay Plaintiffs and other Minimum Wage Class Members and other Overtime Class Members
27 for all hours worked and for all overtime hours worked at the correct overtime rate and failing to pay
28 Plaintiffs and other Reporting Time Class Members for all reporting time pay earned, Defendants

1 Rustic Bakery and Rustic Café derivatively failed to provide Plaintiffs and other Wage Statement
2 Penalty Class Members with accurate itemized wage statements during the Class Period.

3 60. First, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and other
4 Wage Statement Penalty Class Members with accurate itemized wage statements listing all gross
5 wages earned in violation of California Labor sections 226, subdivision (a)(1).

6 61. Second, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and
7 other Wage Statement Penalty Class Members with accurate itemized wage statements listing all net
8 wages earned in violation of California Labor sections 226, subdivision (a)(2).

9 62. Third, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and other
10 Wage Statement Penalty Class Members with accurate itemized wage statements listing all hourly
11 rates in violation of California Labor sections 226, subdivision (a)(9).

12 **Failure to Timely Pay Final Wages Upon Termination**

13 63. Because Defendants Rustic Bakery and Rustic Café had a policy and/or practice of
14 failing to pay Plaintiffs and other Minimum Wage Class Members and other Overtime Class Members
15 for all hours worked and for all overtime hours worked at the correct overtime rate and for failing to
16 pay Plaintiffs and other Reporting Time Class Members for all reporting time pay earned, Defendants
17 Rustic Bakery and Rustic Café derivatively failed to pay Plaintiffs and other Waiting Time Class
18 Members their final wages on their last day of employment or within seventy-two (72) hours of
19 resigning without prior notice for at least three years before the filing of this Class and Representative
20 Action Complaint in violation of California Labor Code sections 201, 202, and 203.

21 **Failure to Reimburse Business Expenses**

22 64. At all times relevant to this Class and Representative Action Complaint, Defendants
23 Rustic Bakery and Rustic Café had policy and/or practice of failing to reimburse Plaintiffs and other
24 Business Expenses Reimbursement Class Members for necessary business expenses in violation of
25 California law.

26 65. At all times relevant to this Class and Representative Action Complaint, Defendants
27 Rustic Bakery and Rustic Café failed to provide Plaintiffs and other Business Expenses
28 Reimbursement Class Members with adequate tools, including non-slip shoes and knives. Plaintiffs

1 and other Business Expenses Reimbursement Class Members instead had to pay out-of-pocket for
2 these necessary expenses.

3 66. Defendants Rustic Bakery and Rustic Café could have provided Plaintiffs and other
4 Business Expenses Reimbursement Class Members with the actual tools for use on the job. Defendants
5 Rustic Bakery and Rustic Café also could have reimbursed Plaintiffs and other Business Expenses
6 Reimbursement Class Members for out-of-pocket expenses in purchasing tools for use on the job.
7 Instead, Defendants Rustic Bakery and Rustic Café passed these operating costs off onto Plaintiffs and
8 other Business Expenses Reimbursement Class Members in violation of California law.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **[Cal. Labor Code, §§ 1182.12, 1194, 1194.2, 1197, 1198; IWC Wage Order Nos. 1, 5, and 7]**

12 **(Brought by All Plaintiffs Against All Defendants)**

13 67. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
14 paragraphs of this Class and Representative Action Complaint.

15 68. California Labor Code sections 1182.12 and 1197, and section 4 of IWC Wage Orders
16 Nos. 1, 5, and 7, require Defendants to pay Plaintiffs and other Minimum Wage Class Members at
17 least the state hourly minimum wage for every hour Defendants required, suffered, or permitted
18 Plaintiffs and other Minimum Wage Class Members to work during the Class Period.

19 69. California Labor Code section 1198 makes unlawful the employment of an employee
20 under conditions the IWC prohibits. California Labor Code sections 1194, subdivision (a), and 1194.2,
21 subdivision (a), provide that an employer that fails to pay its employees the legal minimum wage is
22 liable to the employees for the unpaid balance of the unpaid wages, interest at a rate of 10 percent per
23 annum under California Labor Code section 218.6, and liquidated damages in an amount equal to the
24 unpaid wages.

25 70. At all times relevant time to this Class and Representative Action Complaint,
26 Defendants had a policy and/or practice of failing to pay Plaintiffs and other Minimum Wage Class
27 Members at least the minimum wage for all hours Plaintiffs and other Minimum Wage Class Members
28 worked for Defendants in violation of California Labor Code sections 1182.12, 1194, 1197, including:

(1) time that Defendants required, suffered, or permitted Plaintiffs and other Minimum Wage Class Members to work off-the-clock during interrupted meal periods; (2) time that Defendants required, suffered, or permitted Plaintiffs and other Minimum Wage Class Members to work waiting in lines to clock back into work during shortened meal periods; (3) time that Defendants required, suffered, or permitted Plaintiffs and other Minimum Wage Class Members to work waiting in lines to clock into work at the beginning of their shifts; (4) time that Defendants required, suffered, or permitted Plaintiffs and other Minimum Wage Class Members to work off-the-clock performing post-shift duties; (5) time that Defendants required, suffered, or permitted Plaintiffs and other Minimum Wage Class Members to work performing onboarding and training activities; and (6) minimum wages denied to Plaintiffs and other Minimum Wage Class Members because Defendants deducted deposits for uniforms from Plaintiffs' and other Minimum Wage Class members' final paychecks.

71. Defendants knowingly and willfully failed to pay Plaintiffs and other Minimum Wage Class Members minimum wages for all hours worked for Defendants during the Class Period as required by California law.

72. As a direct and proximate result of Defendants' failure to pay Plaintiffs and other Minimum Wage Class Members minimum wages for all hours worked for Defendants as required by California law, Plaintiffs and other Minimum Wage Class Members sustained damages.

73. Pursuant to California Labor Code sections 1194, 1194.2, and 1197, Plaintiffs and other Minimum Wage Class Members can recover from Defendants the unpaid balance of their unpaid minimum wages, as well as interest at a rate of 10 percent per annum under California Labor Code section 218.6, costs, liquidated damages in an amount equal to the wages unlawfully unpaid, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

[Cal. Labor Code, §§ 1194 and 1198; IWC Wage Order Nos. 1, 5, and 7]

(Brought by All Plaintiffs Against All Defendants)

74. Plaintiffs and other Class Members re-allege and incorporate by reference all previous paragraphs of this Class and Representative Action Complaint.

1 75. California Labor Code sections 510, 1194, and 1198, and section 3 of IWC Wage Order
2 Nos. 1, 5, and 7, require Defendants to pay Plaintiffs and other Overtime Class Members overtime
3 wages at the correct overtime rate for all overtime hours Defendants required, suffered, or permitted
4 Plaintiffs and other Overtime Class Members to work during the Class Period.

5 76. California Labor Code section 1198 makes unlawful the employment of an employee
6 under conditions the IWC prohibits. Moreover, California Labor Code section 510 and section 3 of
7 IWC Wage Order Nos. 1, 5, and 7, require employers to pay hourly, non-exempt employees overtime
8 wages at one and-one-half times the employee's regular hourly rate for hours worked in excess of
9 eight (8) hours in a workday or forty (40) hours in a workweek or for the first eight (8) hours worked
10 on the seventh day of work, and to pay overtime wages at double the employee's regular hourly rate
11 for hours worked in excess of twelve (12) hours in a workday or in excess of eight (8) hours in a
12 workday on the seventh day of work. Lastly, pursuant to California Labor Code section 1194,
13 subdivision (a), an employee can recover the unpaid balance of all unpaid overtime compensation.

14 77. At all times relevant to this Class and Representative Action Complaint, Plaintiffs and
15 other Overtime Class Members regularly worked overtime hours on a daily and weekly basis.

16 78. At all times relevant to this Class and Representative Action Complaint, Defendants
17 failed to pay overtime wages to Plaintiffs and other Overtime Class Members as required by the
18 California Labor Code section 510 and section 3 of IWC Wage Order Nos. 1, 5, and 7 because of the
19 following five policies and/or practices: (1) time that Defendants required, suffered, or permitted
20 Plaintiffs and other Overtime Class Members to work off-the-clock during interrupted meal periods;
21 (2) time that Defendants required, suffered, or permitted Plaintiffs and other Overtime Class Members
22 to work waiting in lines to clock back into work during shortened meal periods; (3) time that
23 Defendants required, suffered, or permitted Plaintiffs and other Overtime Members to work waiting
24 in lines to clock into work at the beginning of their shifts; (4) time that Defendants required, suffered,
25 or permitted Plaintiffs and other Overtime Class Members to work off-the-clock performing post-shift
26 duties; and (5) time that Defendants required, suffered, or permitted Plaintiffs and other Overtime
27 Class Members to work performing onboarding and training activities.

28 79. Defendants knowingly and willfully failed to pay Plaintiffs and other Overtime Class

Members overtime wages at the correct overtime rate for all overtime hours that Defendants required, suffered, or permitted Plaintiffs and other Overtime Class Members to work during the Class Period.

80. As a direct and proximate result of Defendants' failure to pay Plaintiffs and other Overtime Class Members all overtime wages at the correct overtime rate for all overtime hours that Defendants required, suffered, or permitted Plaintiffs and other Overtime Class Members to work during the Class Period, Plaintiffs and members of the Overtime Class sustained damages.

81. Pursuant to California Labor Code section 1194, subdivision (a), Plaintiffs and other Overtime Class Members can recover from Defendants their unpaid overtime compensation, as well as interest thereon at a rate of 10 percent per annum under California Labor Code section 218.6, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY MEAL PERIOD PREMIUMS

[Cal. Labor Code, § 226.7; IWC Wage Order Nos. 1, 5, and 7]

(Brought by All Plaintiffs Against All Defendants)

82. Plaintiffs and other Class Members re-allege and incorporate by reference all previous paragraphs of this Class and Representative Action Complaint.

83. California Labor Code section 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

84. California Labor Code section 226.7, subdivision (b), makes it unlawful for employers to require hourly, non-exempt employees to work during any meal period mandated by an applicable IWC Order.

85. California Labor Code section 512 and section 10, subdivision (A), of IWC Wage Order Nos. 1, 5, and 7, prohibit employers from employing a worker for more than five hours without providing a meal period of at least 30 minutes. California Labor Code section 512 also prohibits employers from employing a worker for more than 10 hours without providing a second meal period of at least 30 minutes.

86. California Labor Code section 512, subdivision (a), and section 10, subsection (B) of IWC Wage Order Nos. 1, 5, and 7 also make it unlawful for an employer, like Defendants, to require,

1 suffer, or permit an employee to work for a work period of more than ten (10) hours per day without
2 providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes,
3 except that when the total hours worked is no more than twelve (12) hours, the second meal period
4 may be waived by mutual consent of the employer and the employee but only if the first meal period
5 was not waived by the employee.

6 87. Under California Labor Code section 226.7, subdivision (c), and IWC Wage Order No.
7 1 section 10, subsection (D), No. 5 section 10, subsection (B), and No. 7 section 10, subsection (D), if
8 an employer fails to provide an employee with a compliant meal period, the employer must pay the
9 employee one hour of pay at the employee's regular rate of pay for each workday that the employer
10 did not provide the employee with a compliant meal period.

11 88. At all times relevant to this Class and Representative Action Complaint, Defendants
12 failed to provide Plaintiffs and other Meal Period Class Members with meal periods that complied
13 with California Labor Code sections 226.7 and 512 and IWC Wage Order Nos. 1, 5, 7. Because of
14 Defendants' policies and practices of understaffing its facilities, the layout of its facilities, and the
15 limited number of time clocks at their facilities, Plaintiffs and other Meal Period Class Members
16 regularly: (1) worked through part or all of their meal periods; (2) had their meal periods interrupted
17 for as much as five to ten minutes by management to correct errors in orders, add items to orders, or
18 help with orders that required immediate completion; (3) had their meal breaks shortened because of
19 time spent waiting in lines to clock back into work; and/or (4) waited extended periods of time before
20 being allowed to take "late" meal periods. On information and belief, Defendants Rustic Bakery and
21 Rustic Café also failed to provide Plaintiff and other Meal Period Class Members with second 30-
22 minute meal periods on days that they worked in excess of ten (10) hours in one day.

23 89. At all times relevant to this Class and Representative Action Complaint, Defendants
24 failed to pay Plaintiffs and other Meal Period Class Members premium pay when Defendants failed to
25 provide them with compliant meal periods in accordance with California Labor Code sections 226.7
26 and 512 and IWC Wage Order Nos. 1, 5, and 7.

27 90. At all times relevant to this Class and Representative Action Complaint, Defendants
28 knowingly and willfully failed to pay Plaintiffs and other Meal Period Class Members premium pay

1 when Defendants failed to provide them with compliant meal periods as required by California law.

2 91. As a direct and proximate result of Defendants' failure to pay meal period premiums
3 when Defendants failed to provide Plaintiffs and Meal Period Class Member with compliant meal
4 periods, Plaintiffs and other Meal Period Class Members sustained economic damages.

5 92. Pursuant to California Labor Code section 226.7, subdivision (c), and IWC Wage Order
6 No. 1 section 10, subsection (D), No. 5 section 10, subsection (B), and No. 7 section 10, subsection
7 (D), Plaintiffs and other Meal Period Class Members can recover from Defendants one additional hour
8 of pay at Plaintiffs' and other Meal Period Class Member's regular hourly rate of pay for each workday
9 that Defendants failed to provide them with a compliant meal period as required by California law,
10 interest thereon at a rate of 7 percent per annum under California Civil Code section 3287, and costs
11 of suit.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PAY REST PERIOD PREMIUMS**

14 **[Cal. Labor Code, § 226.7; IWC Wage Order Nos. 1, 5, and 7]**

15 **(Brought by All Plaintiffs Against All Defendants)**

16 93. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
17 paragraphs of this Class and Representative Action Complaint.

18 94. California Labor Code section 1198 makes unlawful the employment of an employee
19 under conditions the IWC prohibits.

20 95. California Labor Code section 226.7, subdivision (b), prohibits an employer from
21 requiring an employee to work during any rest period required by an applicable IWC Wage Order.
22 Section 11, subsection (A) of IWC Wage Order Nos. 1, 5, and 7 require employers to authorize and
23 permit employees who work three and one half or more hours in a workday to take a paid rest period
24 of at least 10 minutes for every four hours worked or major fraction thereof, which insofar as
25 practicable shall be in the middle of each work period.

26 96. Under California Labor Code section 226.7, subdivision (c), and section 11, subsection
27 (B), of IWC Wage Order Nos. 1, 5, and 7, if an employer fails to provide an employee with a compliant
28 rest period, the employer must pay the employee one hour of pay at the employee's regular rate of pay

1 for each workday that the employer did not provide a compliant rest period.

2 97. At all times relevant to this Class and Representative Action Complaint, Defendants
3 failed to provide Plaintiffs and other Rest Period Class Members with rest periods that complied with
4 California Labor Code section 226.7 and IWC Wage Order Nos. 1, 5, and 7. Defendants' policies and
5 practices of understaffing their facilities regularly resulted in insufficient rest period coverage to
6 permit Plaintiffs and other Rest Period Class Members with the requisite opportunities to take rest
7 periods as required by California law. Furthermore, Plaintiffs and other Rest Period Class Members
8 could not take rest periods on their own volition and had to wait for management to authorize them to
9 take them. Because of the pressure to meet warehouse demands, Defendants' management frequently
10 prevented Plaintiffs and other Rest Period Class Members from taking all complete, uninterrupted,
11 and/or timely (10) minute rest periods.

12 98. At all times relevant to this Class and Representative Action Complaint, Defendants
13 failed to provide Plaintiffs and other Rest Period Class Members with premium pay as required by
14 California Labor Code section 226.7 when Defendants failed to provide them with compliant rest
15 periods in accordance with California Labor Code sections 226.7 and 512 and IWC Wage Order Nos.
16 1, 5, and 7.

17 99. At all times relevant to this Class and Representative Action Complaint, Defendants
18 knowingly and willfully failed to pay Plaintiffs and other Rest Period Class Members premium pay
19 when Defendants failed to provide them with compliant rest periods as required by California law.

20 100. As a direct and proximate result of Defendants' failure to pay premium pay when
21 Defendants failed to provide Plaintiffs and Rest Period Class Members with compliant rest periods as
22 required by California law, Plaintiffs and other Rest Period Class Members sustained economic
23 damages.

24 101. Pursuant California Labor Code section 226.7, subdivision (c), and section 11,
25 subsection (B), of IWC Wage Order Nos. 1, 5, and 7, Plaintiffs can recover from Defendants one
26 additional hour of pay at the Plaintiffs' and other Rest Period Class Member's regular hourly rate of
27 pay for each workday that Defendants failed to provide Plaintiffs and other Rest Period Class Members
28 with a compliant rest period as required by California law, including interest thereon at a rate of 7

1 percent per annum under California Civil Code section 3287, and costs of suit.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY REPORTING TIME PAY**

4 **[Cal. Labor Code, § 1198; IWC Wage Order Nos. 1, 5, and 7]**

5 **(Brought by All Plaintiffs Against All Defendants)**

6 102. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
7 paragraphs of this Class and Representative Action Complaint.

8 103. California Labor Code section 1198 makes unlawful the employment of an employee
9 under conditions the IWC prohibits.

10 104. Section 5, subsection (A), of IWC Wage Orders Nos. 1, 5, and 7 provide: “Each
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day’s work, the employee shall be paid for
13 half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
14 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.”

15 105. At all times relevant to this Class and Representative Action Complaint, Defendants
16 failed to provide Plaintiffs and other Reporting Time Class Members with appropriate reporting time
17 pay.

18 106. On days when Defendants required Plaintiffs and other Reporting Time Class Members
19 to work and Plaintiffs and other Reporting Time Class Members did in fact work, but were not put to
20 work for at least half of their usual or scheduled day’s work, Defendants Rustic Bakery and Rustic
21 Café failed to pay Plaintiffs and other Reporting Time Class Members for half of Plaintiffs’ and other
22 Reporting Time Class Members’ usual or scheduled days’ wages.

23 107. On days when Defendants Rustic Bakery and Rust Café required Plaintiffs and other
24 Reporting Time Class Members to work and Plaintiffs and other Reporting Time Class Members did
25 not work, Defendants Rustic Bakery and Rustic Café failed to pay Plaintiff and other Reporting Time
26 Class Members for at least two hours of work at their regular rate of pay.

27 108. Defendants knowingly and willfully failed to pay Plaintiffs and other Reporting Time
28 Class Members all reporting time pay during the Class Period.

109. As a direct and proximate result of Defendants' failure to pay Plaintiffs and other Reporting Time Class Members all reporting time pay, Plaintiffs and other Reporting Time Class Members sustained damages.

110. Pursuant to California Labor Code section 1198 and, section 5, subsection (A), of IWC Wage Orders Nos. 1, 5, and 7, Plaintiffs and other Overtime Class Members can recover from Defendants their unpaid reporting time pay as well as interest thereon at a rate of 10 percent per annum under California Labor Code section 218.6, costs, and attorneys' fees.

SIXTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Labor Code, § 226; IWC Wage Order Nos. 1, 5, and 7]

(Brought by All Plaintiffs Against All Defendants)

111. Plaintiffs and other Class Members re-allege and incorporate by reference all previous paragraphs of this Class and Representative Action Complaint.

112. California Labor Code section 226, subdivision (a), requires employers to provide to their employees, on a semimonthly basis or at time the employer pays wages, with an accurate itemized wage statement in writing detailing the following information: (1) gross wages earned; (2) total hours worked by the employee ; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all a deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and his or her social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

113. Section 7, subsection (B) of IWC Wage Orders Nos. 1, 5, and 7 similarly require employers to provide their employees, on a semimonthly basis or at time of the employer pays wages, with an accurate itemized wage statement in writing detailing the following information: all deductions; the inclusive dates of the period for which the employee is paid; the name of the employee or the employee's social security number; and the name of the employer.

1 114. California Labor Code section 226, subdivision (e), provides that an employee who
2 suffers injury as a result of a knowing and intentional failure by an employer to comply with section
3 226, subdivision (a), may recover the greater of actual damages or the statutory penalty of fifty dollars
4 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
5 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
6 thousand dollars (\$4,000).

7 115. California Labor Code section 226, subdivision (e)(2)(B), provides that an employee is
8 deemed to suffer injury if the wage statement fails to accurately and completely provide certain
9 information and the employee cannot promptly and easily determine such information from the wage
10 statement alone. In relevant part, California Labor Code section 226, subdivision (e)(2)(B), provides
11 that an employee is deemed to suffer injury if the wage statement does not accurately and completely
12 state the total number of hours worked by the employee, all applicable hourly rates in effect during
13 the pay period, and the corresponding number of hours worked at each hourly rate.

14 116. Because Defendants Rustic Bakery and Rustic Café had a policy and/or practice of
15 failing to pay Plaintiffs and other Minimum Wage Class Members and other Overtime Class Members
16 for all hours worked and for all overtime hours worked at the correct overtime rate and for failing to
17 pay Plaintiffs and Reporting Time Class Members for all reporting time pay earned, Defendants Rustic
18 Bakery and Rustic Café intentionally and willfully failed to provide Plaintiffs and other Wage
19 Statement Penalty Class Members with accurate itemized wage statements as required by California
20 law.

21 117. First, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and other
22 Wage Statement Penalty Class Members with accurate itemized wage statements listing all gross
23 wages earned in violation of California Labor sections 226, subdivision (a)(1).

24 118. Second, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and
25 other Wage Statement Penalty Class Members with accurate itemized wage statements listing all net
26 wages earned in violation of California Labor sections 226, subdivision (a)(2).

27 119. Third, Defendants Rustic Bakery and Rustic Café failed to provide Plaintiffs and other
28 Wage Statement Penalty Class Members with accurate itemized wage statements listing all hourly

1 rates in violation of California Labor sections 226, subdivision (a)(9).

2 120. Because Defendants Rustic Bakery and Rustic Café had a policy and/or practice of
3 failing to pay Plaintiffs and other Minimum Wage Class Members and other Overtime Class Members
4 for all hours worked and for all overtime hours worked at the correct overtime rate and for failing to
5 pay Plaintiffs and other Reporting Time Class Members for all reporting time pay earned, Defendants
6 Rustic Bakery and Rustic Café derivatively failed to provide Plaintiffs and other Wage Statement
7 Penalty Class Members with accurate itemized wage statements during the Class Period.

8 121. As a direct and proximate result of Defendants' failure to provide Plaintiffs and other
9 Wage Statement Penalty Class Members with accurate itemized wage statements as required by
10 California law, Plaintiffs and other Wage Statement Penalty Class suffered injury and damages.

11 122. Specifically, Plaintiffs and other Wage Statement Penalty Class Members were injured
12 by Defendants' intentional violation of California Labor Code section 226, subdivision (a), because
13 they were denied both their legal right and interest in receiving accurate, itemized wage statements
14 under California Labor Code section 226, subdivision (a). Plaintiffs and other Wage Statement Penalty
15 Class Members were injured by Defendants' intentional violation of California Labor Code section
16 226, subdivision (a), because it has caused confusion over whether they received from Defendants all
17 of the wages owed to them, in addition to their difficulty and expense in reconstructing pay records
18 and making mathematical computations to analyze whether the wages paid to them did in fact
19 compensate them for all hours worked.

20 123. Plaintiffs and other Wage Statement Penalty Class Members can recover from
21 Defendants the greater of their actual damages caused by Defendants' failure to comply with
22 California Labor Code section 226, subdivision (a), or an aggregate penalty not exceeding four
23 thousand dollars per employee, reasonable attorneys' fees, and costs of suit.

24 124. California Labor Code section 226, subdivision (h), authorizes courts to issue
25 injunctive relief to remedy violations of section 226, subdivision (a). Plaintiffs and other Wage
26 Statement Penalty Class Members can obtain injunctive relief enjoining Defendants: (i) to
27 immediately begin providing Plaintiffs and other members of Wage Statement Penalty Class itemized
28 wage statements containing all of the information required by California Labor Code section 226,

1 subdivision (a); and (ii) to immediately provide all Plaintiffs and other members of the Wage
2 Statement Penalty Class the information required by California Labor Code section 226, subdivision
3 (a), dating back to those employees' beginning of employment or to the start of the applicable
4 limitations period, whichever is further back in time.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT**

7 **[Cal. Labor Code, §§ 201, 202, and 203]**

8 **(Brought by All Plaintiffs Against All Defendants)**

9 125. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
10 paragraphs of this Complaint.

11 126. California Labor Code section 201 requires an employer who discharges an employee
12 to pay all compensation due and owing to that employee immediately upon the employee's discharge
13 from employment.

14 127. California Labor Code section 202 requires an employer promptly to pay all
15 compensation due and owing to an employee within 72 hours after that employee's employment
16 terminates, including by resignation.

17 128. California Labor Code section 203 provides that if an employer willfully fails to pay
18 all compensation due promptly upon discharge or resignation, as required by sections 201 and 202,
19 the employer shall be liable for waiting time penalties in the form of continued compensation for up
20 to thirty (30) days.

21 129. As alleged in this Class and Representative Action Complaint, the unpaid wages owed
22 to Plaintiffs and other Waiting Time Penalty Class Members at the time of termination of their
23 employment include unpaid regular, overtime, double time wages, and reporting time pay.

24 130. At all times relevant to this Class and Representative Action Complaint, by failing to
25 properly compensate Plaintiffs and other Waiting Time Penalty Class Members upon separation,
26 including but not limited to Defendants' failure to properly pay Plaintiffs and other Waiting Time
27 Penalty Class Members wages for all hours worked when due, i.e. minimum wages, overtime wages,
28 double time wages, and reporting time pay, Defendants willfully failed to pay all compensation owed

1 to Plaintiffs and Waiting Time Penalty Class Members in accordance with California Labor Code
2 sections 201 and 202.

3 131. As a direct and proximate result of Defendants' failure to pay all wages due upon
4 separation, Plaintiffs and other Waiting Time Penalty Class Members sustained damages.

5 132. Plaintiffs and other Waiting Time Penalty Class Members can recover from Defendants
6 the statutory penalty wages for each calendar day they were not paid their owed compensation, up to
7 a thirty (30) day maximum pursuant to California Labor Code section 203.

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

10 **[Cal. Labor Code, § 2802; IWC Wage Order Nos. 1, 5, and 7]**

11 **(Brought by All Plaintiffs Against All Defendants)**

12 133. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
13 paragraphs of this Class and Representative Action Complaint.

14 134. California Labor Code sections 2802, subdivision (a), requires employers to reimburse
15 their employees for all necessary expenditures incurred by their employees in direct consequence of
16 the discharge of their job duties or in direct consequence of their obedience to the directions of the
17 employer.

18 135. Section 9, subsection (B), of IWC Wage Order Nos. 1, 5, and 7, provide: "When the
19 employer requires the use of tools or equipment or they are necessary for the performance of a job,
20 such tools and equipment shall be provided and maintained by the employer, except that an employee
21 whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and
22 equipment customarily required by the particular trade or craft in conformity with Labor Code Section
23 2802."

24 136. At all times relevant to this Class and Representative Action Complaint, Defendants
25 failed to provide Plaintiffs and other Business Expenses Reimbursement Class Members all tools,
26 supplies and equipment necessary to perform their job duties including, but not limited to: non-slip
27 shoes and knives.

28 137. By requiring Plaintiffs and other Business Expenses Class Members to pay for work-

1 related expenses without reimbursement, even though Plaintiffs' and other Business Expenses
2 Reimbursement Class Members' wages were not at least twice the minimum wage, Defendants
3 violated California Labor Code section 2802 and section 8 IWC Wage Order Nos. 1, 5, and 7.

4 138. Defendants knowingly and willfully failed to reimburse Plaintiffs and other Business
5 Expenses Reimbursement Class Members for all necessary work-related expenses and costs.

6 139. As a direct and proximate result of Defendants' failure to reimburse Plaintiffs and other
7 Business Expenses Reimbursement Class Members for all necessary work-related expenses and costs
8 as required by California law, Plaintiffs and other Business Expenses Reimbursement Class Members
9 sustained damages.

10 140. Pursuant to California Labor Code section 2802, subdivision (c), Plaintiffs and other
11 Business Expenses Reimbursement Class Members can recover from Defendants their business-
12 related expenses and costs incurred during the course and scope of their employment plus interest
13 accrued from the date on which they incurred the necessary expenditures at a rate of 7 percent per
14 annum per California Civil Code section 3287, reasonable attorneys' fees, and costs of suit.

15 **NINTH CAUSE OF ACTION**

16 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

17 **[Cal. Business & Professions Code, §§ 17200 et seq.]**

18 **(Brought by All Plaintiffs Against All Defendants)**

19 141. Plaintiffs and other Class Members re-allege and incorporate by reference all previous
20 paragraphs of this Class and Representative Action Complaint.

21 142. As alleged in this Class and Representative Action Complaint, Defendants' conduct,
22 has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, other UCL Class Members,
23 and to the general public. Plaintiffs and other UCL Class Members seek to enforce important rights
24 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

25 143. As alleged in this Class and Representative Action Complaint, Defendants' actions
26 violate California law and constitute unlawful business acts and practices in violation of California
27 Business & Professions Code sections 17200 et seq.

28 144. A violation of California Business & Professions Code section 17200 et seq. may be

1 predicated on the violation of any state or federal law. In the present case, Defendants' policy and/or
2 practice of failing to pay all regular, overtime, double-time wages owed to Plaintiffs and other UCL
3 Class Members violates California Labor Code sections 1194 and 1198 and IWC Wage Order Nos. 1,
4 5, and 7; Defendants' policy and/or practice of not providing Plaintiffs and other UCL Class Members
5 with meal and rest period premiums for workdays that Plaintiffs and other UCL Class Members did
6 not receive compliant meal and rest periods violates California Labor Code sections 226.7 and 512,
7 subdivision (a), and IWC Wage Order Nos. 1, 5, and 7; Defendants' policy and practice of not paying
8 all reporting time pay violates California Labor Code section 1198 and IWC Wage Orders Nos., 1, 5,
9 and 7; Defendants' policy and/or practice of not timely paying all wages owed to Plaintiffs and Class
10 Members upon resignation or termination violates California Labor Code sections 201, 202, and 203;
11 Defendants' policy and/or practice of not fully reimbursing Plaintiffs and Class Members for necessary
12 work-related expenses and costs incurred during their employment violates California Labor Code
13 sections 2800 and 2802 and IWC Wage Order Nos. 1, 5, and 7; and Defendants' policy and/or practice
14 of failing to provide accurate itemized wage statements violates California Labor Code section 226
15 and IWC Wage Order Nos. 1, 5, and 7.

16 145. As alleged in this Complaint, Defendants' unlawful business acts and practices,
17 involve, but not necessarily limited to the loss of money and/or property.

18 146. Because of Defendants violations of the California Labor Code and IWC Wage Order
19 Nos. 1, 5, and 7, Plaintiffs and other UCL Class Members sustained damages and/or injuries.

20 147. Pursuant to California Business & Professions Code sections 17200 et seq., Plaintiffs
21 and other UCL Class Members can recover from Defendants restitution in the amount of the wages
22 unlawfully withheld and retained by Defendants during the Class Period; a permanent injunction
23 requiring Defendants to pay all outstanding wages due to Plaintiffs and other UCL Class Members;
24 costs; and attorneys' fees pursuant to California Code of Civil Procedure section 1021.5

25 //

26 //

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

3

4

5

6

8
9
0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26

27
28

1 b. Defendants violated Labor Code sections 1194, 1194.2, and 1197 by failing to
2 pay Plaintiffs and other aggrieved employees the statutory minimum wage for all hours worked;

3 c. Defendants violated Labor Code sections 226.7, 512, 516, and 558 by failing to
4 authorize and permit all legally required meal and rest periods and failing to pay meal and rest period
5 premiums to Plaintiffs and other aggrieved employees;

6 d. Defendants violated Labor Code section 1198 by failing to pay Plaintiff and
7 other aggrieved employees with all reporting time pay earned;

8 e. Defendants violated Labor Code section 226 by failing to furnish Plaintiffs and
9 other aggrieved employees with accurate and compliant itemized wage statements;

10 f. Defendants violated Labor Code section 204 by failing to pay Plaintiffs and
11 other aggrieved employees all earned wages at least twice during each calendar month;

12 g. Defendants violated Labor Code section 1174 by failing to maintain accurate
13 records on behalf of Plaintiffs and other aggrieved employees;

14 h. Defendants violated Labor Code sections 201, 202 and 203 by failing to timely
15 pay all final wages due to Plaintiffs and other aggrieved employees; and

16 i. Defendants violated Labor Code section 2802 by failing to indemnify necessary
17 expenditures due to Plaintiffs and other aggrieved employees.

18 151. On August 5, 2020, counsel for Plaintiffs notified Defendants via certified mail,
19 and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
20 Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil
21 penalties under California Labor Code section 2698 et seq. with respect to above violations of the
22 California Labor Code. A true and correct copy of Plaintiffs’ letter is attached hereto as **Exhibit 1**.
23 Now that at least sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of
24 these violations and the LWDA has not provided notice that it intends to investigate the violations,
25 Plaintiffs have exhausted their administrative requirements for bringing a claim under the PAGA with
26 respect to these violations.

27 //

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

- 7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

1 k. Civil penalties authorized by the Private Attorneys General Act of 2004 in
2 Labor Code section 2699, subdivisions (a) and (f).

3 l. Attorneys' fees and litigation expenses pursuant to Labor Code sections
4 218.5, 226, subdivision (h), 1194, subdivision (a), 2802, 2699, subdivision (g)(1), and California Code
5 of Civil Procedure section 1021.5, and such other provisions as may be applicable;

6 m. Pre-judgment and post-judgment interest on all sums awarded;

7 n. Costs of suit; and

8 o. For such other and further relief as is equitable, just and proper.

9
10 Dated: December 9, 2020

11
12 

13 _____
14 JOSE MACIAS, JR.
15 HECTOR RODRIGUEZ
16 TRAVIS M. ADAMS

17 **MACIAS RODRIGUEZ LLP**

18 Attorneys for Plaintiffs
19 JEFERSON GARCIA
20 WILSON GARCIA
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1
NOTICE TO LWDA OF CALIFORNIA LABOR CODE VIOLATIONS



Macías Rodríguez LLP
— ATTORNEYS AT LAW —

Macías Rodríguez LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

Hector J. Rodríguez
408.455.6388 direct
408.455.1243 main
hector@maciasrodriguez.com

August 5, 2020

VIA ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA CERTIFIED MAIL

Rustic Bakery, Inc.
ATTN: Carol Ann Le Valley
771 Rowland Boulevard
Novato, CA 94945

Rustic Bakery International, Inc.
ATTN: Carol Ann Le Valley
3902 Cypress Drive
Petaluma, CA 94954

Rustic Cafe, Inc.
ATTN: Carol Ann Le Valley
1139 Magnolia Avenue
Larkspur, CA 94939

**Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT (CALIFORNIA LABOR CODE SECTION 2699.3)**

Dear Administrator:

This office represents Jeferson Garcia and Wilson Garcia ("Claimants") in connection with their claims under the California Labor Code. Claimants were employees of Rustic Bakery, Inc., Rustic Bakery International, Inc., and Rustic Cafe, Inc. ("Respondents").

Claimants intend to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698 et seq., the Private Attorneys General Act of 2004 ("PAGA"). Claimants seek relief on behalf of themselves, the State of California, and other persons who were employed by Respondents in California as non-exempt, hourly-paid employees and who received at least one wage statement during the relevant statutory time period ("aggrieved employees"). This letter is sent in accordance with the notice and reporting requirements of California Labor Code section 2699.3.

Respondents employed Claimants as non-exempt, hourly-paid food preparers during the past two years and recently terminated their employment in March 2020. Throughout their employment,

Claimants worked for Respondents at a café and production facility located at: 1407 Grant Avenue, Novato, CA 94945. Claimants regularly worked more than eight (8) hours per day and more than forty (40 hours) per week. Claimant's job duties included: preparing and packaging salads, sandwiches and soups, as well as, baking and packaging various pastries and breads. Some of the food and baked items Claimants would prepare and package were sent to other cafés, and/or were packaged for delivery to Respondents' domestic and international customers.

During Claimants' employment, Respondents committed one or more of the following Labor Code violations against Claimants, the facts and theories of which are detailed below, making them "aggrieved employees" under California Labor Code section 2699, subdivision (c).

Respondents' Uniform Payroll and Human Resources Practices

Respondents are an integrated enterprise operating a chain of cafés and an international wholesale business geared to the wholesale distribution of artisan products and handcrafted baked goods. Respondents' cafés are located in the cities of Larkspur, Novato, and Tiburon, California. Respondents' production bakeries are located in the cities of Petaluma and Novato, California.

Respondents' principal place of business and corporate headquarters is located at: 3902 Cypress Drive, Petaluma, California 94594. At their corporate headquarters, Respondents operate their primary large production bakery. Respondents also operate a secondary production bakery in the city of Novato, California, located at: 1407 Grant Avenue, Novato, California 94945.

Upon information and belief, Respondents have a centralized human resources (HR) department at their corporate headquarters in Petaluma, California, which implements uniform, standardized policies and practices affecting all of their non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees. At all relevant times, Respondents issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly-paid employees in California, including Claimants and other aggrieved employees, regardless of their location or position.

Upon information and belief, Respondents also maintain a centralized payroll department at their corporate headquarters in Petaluma, California, which processes payroll for all non-exempt, hourly-paid employees working for Respondents in California, including Claimants and other aggrieved employees. In addition, Respondents issue the same uniform and formatted wage statements to all nonexempt, hourly-paid employees in California, regardless of their location, position, or manner in which each employee's employment ended. Respondents' centralized payroll department processed payroll for non-exempt, hourly-paid employees in the same manner throughout California. As such, Respondents used the same methods and formulas for calculating wages due to Claimants, and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 - Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees who work more than eight (8) hours in a workday or more than forty (40) hours in a workweek at the rate of one and a half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours in a day or in

excess of forty (40) hours in a workweek. The applicable IWC Wage Order also provides that employers are required to pay employees, who work more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all compensation for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

Respondents willfully failed to pay all overtime compensation owed to Claimants and other aggrieved employees. During the relevant time period, Claimants and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week.

First, Respondents had, and continue to have, a company-wide policy and/or practice of not paying the proper rate of overtime pay, as required by California law, anytime Claimants or other aggrieved employees worked more than eight (8) hours in one day or more than forty (40) hours in one week. Unpaid overtime pay due to Claimants and aggrieved employees includes time waiting in line to clock in at the beginning of their shifts that was not compensated by Respondents.

Second, Respondents have consistently understaffed and continue to consistently understaff their locations to maximize profits. This company-wide practice of chronically understaffing its locations has resulted and results in having insufficient employees on duty to handle the requisite workload and insufficient employees to provide uninterrupted meal break coverage. Because of this practice, Claimants and other aggrieved employees were not provided adequate meal break coverage to permit them to be completely relieved of their duties in order to enjoy timely, complete, and uninterrupted meal breaks, as required by California law.

Because of the company-wide practice of chronically understaffing its locations, Claimants and other aggrieved employees were regularly interrupted and forced to work during their respective meal breaks – time that was not compensated by Respondents. Furthermore, even though Claimants reported their inability to take breaks to management, Respondents never paid them meal period premium pay, as required by California law.

Respondents' management also regularly interrupted their meal breaks and forced them to go back to their workstation without being registered on the time clock for all of the following reasons: (1) to fix errors that arose in certain orders; (2) to have them add items to certain orders; and/or (3) to assist with emergency orders that needed to be completed immediately. Employees were never paid for this work time and the interruptions lasted between five (5) to ten (10) minutes.

Additionally, because Respondents only had one time clock at their production plants, Claimants and other aggrieved employees regularly had their meal breaks cut short while they waited in line to clock back in from their meal breaks. Given that various warehouse employees took their meal break at the same time, employees spent various minutes waiting in lines to clock back in after their meal breaks – cutting their meal break time without pay. As a result, Claimants and other aggrieved employees missed meal periods and/or had their meal periods cut short but were not compensated for this time.

Third, to minimize payroll costs, Respondents required certain employees, including “Lead” employees, who were responsible for closing down the shift and preparing the warehouse for the next shift, to clock out after working eight (8) hours and to continue working off the clock. These employees were not paid overtime pay for any of these unrecorded hours.

Respondents knew or should have known that these policies – which included not paying overtime pay and not paying overtime hours at the employee’s regular hourly rate - were unlawful. Additionally, Respondents should have known that as a result of these company-wide practices and/or policies, Claimants and other aggrieved employees were performing assigned duties during their meal periods, and were thereby performing off-the clock work for no pay.

Because Claimants and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work performed during unpaid meal periods qualified for overtime premium pay. Therefore, Claimants and other aggrieved employees were not paid overtime pay for all of the overtime hours they actually worked. Respondents’ failure to pay Claimants and other aggrieved employees the proper overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Claimants and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Sections 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum fixed is unlawful. Compensable work time is defined by the applicable Wage Order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

As stated above, because of Respondents’ company-wide understaffing practices and resultant lack of meal break coverage, Claimants and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. This practice of understaffing its employees was further exacerbated because there was only a single time clock at the Respondents’ production facilities and cafés, and employees had to wait in line to clock in at the beginning of their shifts – time that was not compensated by Respondents. Additionally, employees’ meal breaks were regularly cut short while they waited in line to clock back in from their meal periods at the single time clock – time that also was not compensated.

Third, to minimize payroll costs, Respondents required certain employees to clock out after working eight (8) hours and required them to continue working off the clock.

Lastly, Respondents had a policy of not paying employees for time worked onboarding, including employee orientation training. Employees were not paid for work time spent doing all of the following: (1) filling out paperwork after being hired; (2) training on how to use Respondents’ time clocks; and (3) training on Respondent work practices and expectations.

Respondents did not pay minimum wages for meal periods and other off-the-clock hours that Claimants and other aggrieved employees worked through that otherwise would have qualified for overtime premium pay. To the extent that these off-the-clock hours did not qualify for overtime premium pay, Respondents did not pay at least minimum wages for those hours worked off-the-clock. Accordingly, Respondents regularly failed to pay at least minimum wages to Claimants and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Claimants and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1197.1 and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 - Failure to Provide Meal Periods

California Labor Code sections 226.7, 512, subdivision (a), and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512, subdivision (a), and the applicable IWC Wage Order, an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start before the end of the fifth hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.). Labor Code sections 226.7 and 512, subdivision (a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate of pay, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived by the employee.

As stated above, Respondents have, and continue to have, a company-wide policy and/or practice of consistently understaffing locations that resulted in a lack of meal break coverage and prevented other aggrieved employees from taking all timely, complete, and uninterrupted meal periods to which they were entitled. Claimants and other aggrieved employees had to wait for management to authorize them to go on their meal breaks. Because of Respondents' practices and/or policies and the layout of their large warehouses and limited time clocks, other aggrieved employees had to: 1) work through part or all of their meal periods; 2) had their meal breaks cut short waiting in line to clock back in to work; 3) had their meal periods interrupted for as much as five (5) to ten (10) minutes by management to fix errors in orders, add to certain orders, or help with orders that needed to go out immediately; and/or 4) waited extended periods of time before being allowed to take meal periods. Furthermore, on information and belief, Respondents did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid

meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

Respondents knew or should have known that as a result of their policies, including understaffing, layout of their large warehouses, limited time clocks, and failure to provide meal periods, that other aggrieved employees were not actually relieved of all duties to take timely, complete, and uninterrupted meal periods. Respondents also knew or should have known that they did not pay other aggrieved employees meal period premium pay when they were missed, late, short, and/or interrupted.

Respondents also has and continues to engage in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Claimants and other aggrieved employees have not received premium pay for missed meal periods.

Accordingly, Respondents failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198. Other aggrieved employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699, subdivision(a), and (f) through (g).

Violation of California Labor Code Sections 226.7 and 1198 - Failure to Provide Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "(e)very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.)

As with meal periods, Respondents' company-wide policy and practice of understaffing and resulting lack of break coverage prevented Claimants and other aggrieved employees from being relieved of all duty to take compliant rest periods. Claimants and other aggrieved employees had to wait for management to authorize them to go on their rest breaks and were often prevented from doing so. Claimants were frequently not permitted to take full and complete ten (10) minute rest periods, and instead would miss their rest periods or have their rest periods interrupted to meet the warehouse's demands.

Additionally, Respondents regularly failed to provide aggrieved employees with second 10-minute rest periods on days that they worked in excess of six (6) hours in one day. Aggrieved employees were often forced to wait until the last 10 minutes of their typical eight (8) hour shift to "go" on

their second break yet were still required to perform work related duties during those 10 minutes. Accordingly, Claimants and other aggrieved employees were regularly deprived of compliant second rest breaks and were not provided with additional compensation when forced to work during their rest breaks.

Because of Respondents' practices and policies, Claimants and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all timely, complete, and uninterrupted 10 minute rest periods to which they were entitled.

Respondents also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not provided. Because of this practice and/or policy, Claimants and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, Respondents failed to provide all rest periods in violation of California Labor Code sections 226.7, 512, and 1198. Claimants and other aggrieved employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Sections 226(a), 1174(d), and 1198 - Non-Compliant Wage Statements, Failure to Maintain Accurate Payroll Records, and Failure to Provide Payroll Records

California Labor Code section 226, subdivision (a), requires employers to make, keep, and provide true, accurate, and complete employment records. Respondents have not provided Claimants and other aggrieved employees with properly itemized wage statements. Labor Code section 226, subdivision (e), provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in section 226, subdivision (a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Furthermore, Labor Code section 226.3 provides that any employer who violates section 226, subdivision (a), shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226, subdivision (a). Additionally, aggrieved employees that selected direct deposit as a form of payment did not receive a single wage statement during their employment, despite their numerous requests to receive copies of their wage statements.

Respondents have knowingly and intentionally provided Claimants and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. Specifically, Respondents violated sections 226, subdivisions (a)(1), (2), (5), (8) and (9). Respondents deducted time worked from other aggrieved employees' wage statements and employment records for meal periods that were interrupted or missed (and therefore time for that they should have been paid), and did not record time Claimants and other aggrieved employees spent working off-the-clock, the result of which was an unlawful deduction of wages earned and meal period premiums that should have been paid. The wage statement deficiencies also include, among other things, failing to state all hours worked as a result of not recording or stating the hours they worked off-the-

clock – e.g. time spent waiting in line to clock in at the beginning of their shift and time spent working without being registered on the clock. Thus, Respondents did not furnish wage statements to Claimants and other aggrieved employees containing accurate totals of the hours worked (Lab. Code, § 226, subd. (a)(2)), number of hours worked at each hourly rate (Lab. Code, § 226, subd. (a)(9)), net wages earned (Lab. Code, § 226, subd. (a)(5)), and gross wages earned (Lab. Code, § 226, subd. (a)(1)).

California Labor Code section 1174, subdivision (d), provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174, subdivision (d). During the relevant time period, and in violation of Labor Code section 1174, subdivision (d), Respondents willfully failed to maintain accurate payroll records for Claimants and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 also provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Respondents failed, on a company-wide basis, to keep accurate records of work period start and stop times for Claimants and other aggrieved employees, in violation of section 1198.

Because Respondents failed to provide the accurate number of total hours worked on wage statements, Claimants and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, they and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Claimants and other aggrieved employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226, subdivision (e), 226.3, 1174.5, and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code Section 204 - Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and

the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, Respondents failed to pay Claimants and other aggrieved employees all compensation due to them, including, but not limited to, overtime wages, minimum wages and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Claimants and aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699, subdivisions (a), and (f) through (g).

Violation of California Labor Code 201, 202, and 203 - Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Respondents have a company-wide practice and/or policy of not paying departing employees their final wages on their final day of employment or within seventy-two (72) hours of resigning without prior notice, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

Additionally, Respondents willfully failed to pay aggrieved employees who are no longer employed by Respondents all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Respondents employ in violation of California Labor Code sections 201, 202, and 203.

Claimants and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699, subdivisions (a), and (f) through (g).

//

//

//

Violation of California Labor Code § 1198 and California Code of Regulations Title 8 Section 11070 Subdivision 4(C) - Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 also requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” Respondents violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because Respondents failed to pay Claimants and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

On information and belief, Respondents had a company-wide practice of sending employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay employees for half of their scheduled shift. Aggrieved employees would report to work based on the schedule that Respondents provided to them but would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Claimants and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Claimants and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and 2699(f)-(g).

Violation of California Labor Code § 2802 - Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.) The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, Respondents failed to provide Claimants and other aggrieved employees with adequate uniforms for the tasks they were required to perform, instead forcing them and other aggrieved employees to pay out-of-pocket for some of their uniform components. For example, Claimants, as part of their duties as food preparers, were required to use approved slip-resistant shoes. However, Respondents did not provide these shoes to warehouse

employees. Instead, Claimants and other aggrieved employees were required to purchase multiple slip-resistant shoes on their own and were not reimbursed for this cost.

Additionally, Respondents required certain food preparers and bakers to purchase knives. Due to this requirement, Claimant Jefferson Garcia was forced to purchase a five-piece set of knives to fulfill his food preparation duties.

Respondents could have provided Claimants and other aggrieved employees with the actual tools for use on the job, including sufficient sets of knives and non-slip shoes. Respondents also could have also reimbursed employees for their out-of-pocket expenses in purchasing slip resistant shoes and knives to prepare food orders and baked goods. Instead, Respondents passed these operating costs off onto Claimants and other aggrieved employees in violation of California law. As such, Respondents had, and continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. Moreover, at all relevant times, Claimants did not earn at least two (2) times the minimum wage.

Respondents' policy and/or practice of passing their operating costs on to Claimants and other aggrieved employees by requiring that they purchase their own uniforms violates California Labor Code section 2802. Claimants and other aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) through (g).

Violation of California Labor Code – Unlawful Deductions from Wages

California Labor Code section 221 prohibits employers to collect or receive employees' wages previously paid. California Labor Code section 224 authorizes an employer to lawfully withhold amounts from an employee's wages only when (1) required or empowered to do so by state or federal law; (2) a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage set by an agreement or statute; or (3) when a deduction to cover health, welfare, or pension plan contributions is expressly authorized by a wage agreement or a collective bargaining agreement.

Moreover, the applicable wage order provides as follows concerning the provision of uniforms and tools: "[a] reasonable deposit may be required by as a security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employees for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said items is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job."

During the relevant time period, Respondents made unlawful deductions from Claimant Wilson Garcia and other aggrieved employees from their final paycheck for an alleged failure to return uniforms. Respondents had, and continue to have, a company-wide policy that deducts from employees' earned wages the original cost of any uniform items that were not timely returned to

the Company at the time of termination. Specifically, the Company deducts from terminated employees who failed to return their uniforms a total of \$15.00 for a regular shirt, \$30.00 for a "Manager" long-sleeved shirt, \$25.00 for a "Manager" short-sleeved shirt, \$10.00 for hat, \$10.00 for every apron, \$20.00 for chef jacket, and \$60.00 for driver jacket.

For example, Respondents deducted a total of \$125.00 for ten (10) uniform items provided to Claimant Wilson Garcia from the wages he earned in his final pay period of work with the Company. During his final pay period, Claimant Wilson Garcia worked a total of 10.40 hours at an hourly rate of \$14.94. He also received a total of \$30.99 in gratuities. In total, Claimant Wilson Garcia received \$186.37 in gross pay for this pay period. After Respondents unlawfully deducted \$125.00 from his earned wages, Claimant Wilson Garcia was left with a total of \$61.37 in compensation for his final pay period of work. Therefore, Respondents' wage deduction resulted in denying Claimant Wilson Garcia the required state and local minimum wage.

Respondents' policy and/or practice of making unlawful deductions at the time of termination from Claimant Wilson Garcia and other aggrieved employees violate the California Labor Code and the applicable wage order. Accordingly, Claimants and other aggrieved employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) through (g).

Violation of California Labor Code § 2810.5(a) — Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claimed as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, Respondents failed to provide Claimants and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5, subdivision (a)(1)(A) through (C). Respondents' failure to provide them and other aggrieved employees with written notice of basic information regarding their employment with Respondents is in violation of Labor Code section 2810.5. Claimants and other aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivision (a), and (f) through (g).

//

Violation of California Labor Code §§ 6401 and 6403 - Failure to Provide Personal Protective Equipment

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of their employees. California Labor Code section 6403, subdivision (a), requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

Respondents, on a company-wide basis, failed to provide aggrieved employees with personal protective equipment such as sweaters and jackets to keep them safe in the workplace. The warehouses where Claimants worked had refrigerators to store items in very cold temperatures and employees had to regularly walk inside the refrigerators to perform their job functions and obtain the food products that were being prepared. These conditions forced employees to purchase warm protective equipment out of their own funds to work inside these refrigerators. Respondents failed to provide such reasonably necessary equipment to aggrieved employees to keep them safe. Notably, Respondents offered their own sweaters at a price of \$30.00 for sweaters with zippers and \$15.00 for sweaters without zippers. The cost of these sweaters was provided to employees as part of an appendix to the Employee Manual. Therefore, from the very first day of employment, Respondents' employees were instructed that the cost for protective equipment would be one that they would have to pay out of their own pocket.

Respondents' failure to provide aggrieved employees with basic personal protective equipment for the workplace violates Labor Code sections 6401 and 6403. Claimants and other aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699, subdivisions (f) through (g).

Violation of California Labor Code § 558(a)

California Labor Code section 558, subdivision (a), provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558, subdivision (c), provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Respondents, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Claimants' and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Claimants seek the remedies set forth in Labor Code section 558 for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699, subdivision (a), 2699.3, subdivision (a), and

2699.3, subdivision (c), 2699.5, and 558, Claimants, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Respondents for violations of California Labor Code sections 201, 202, 203, 204, 221, 224, 226, subdivision (a), 226.7, 510, 512, subdivision (a), 1174, subdivision (d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Claimants seek all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the address below:

Macias Rodriguez LLP
1550 The Alameda, Suite 332
San Jose, CA 95126

Sincerely,

A handwritten signature in blue ink, appearing to read 'HJ Rodriguez', with a long horizontal flourish extending to the right.

Hector J. Rodriguez
Partner