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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGEL SALCEDO, individually, and on  
behalf of other members of the general  
public similarly situated,

Plaintiff,

vs.

DHILLON FOODS, INC., a California  
corporation; DHILLON & HURTADO  
ENTERPRISES, LLC, a Delaware limited  
liability company; ENCHANT FOODS,  
INC., a California corporation; JUSHEN  
RESTAURANTS, INC., a California  
corporation; KAHANI RESTAURANTS,  
LLC, a Delaware limited liability company;  
SAGE RESTAURANTS, LLC, a Delaware  
limited liability company; and DOES 1  
through 10, inclusive,

Defendants.

Case No.:

**20STCV42750**

**CLASS ACTION COMPLAINT &  
ENFORCEMENT ACTION UNDER THE  
PRIVATE ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, ET  
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8,

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles  
NOV 09 2020  
Sherri R. Carter, Executive Officer/Clerk of Court  
By: Tanya Herrera, Deputy

BY FAX

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- Section 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

**Jury Trial Demanded**

1 Plaintiff Angel Salcedo, individually and on behalf of all other members of the public  
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved  
3 employees, alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,  
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the  
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction  
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes  
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s  
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this  
5 county and employed Plaintiff in this county, and thus a substantial portion of the transactions  
6 and occurrences related to this action occurred in this county.

### 7 **THE PARTIES**

8 4. Plaintiff Angel Salcedo is a resident of Santa Monica, in Los Angeles County,  
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from  
10 approximately December 2018 to September 2019. Plaintiff worked for Defendants as a  
11 Cashier and Cook at their location in Hermosa Beach, California. During his employment,  
12 Plaintiff typically worked eight (8) hours or more per day, and five (5) to six (6) days per  
13 week. Plaintiff's primary job duties included, without limitation, operating the cash register;  
14 taking customers' orders; serving food and drink to customers; and cleaning the kitchen,  
15 restroom, and dining areas.

16 5. DHILLON FOODS, INC. was and is, upon information and belief, a California  
17 corporation, and at all times hereinafter mentioned, an employer whose employees are  
18 engaged throughout this county, the State of California, or the various states of the United  
19 States of America.

20 6. DHILLON & HURTADO ENTERPRISES, LLC was and is, upon information  
21 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an  
22 employer whose employees are engaged throughout this county, the State of California, or the  
23 various states of the United States of America.

24 7. ENCHANT FOODS, INC. was and is, upon information and belief, a  
25 California corporation, and at all times hereinafter mentioned, an employer whose employees  
26 are engaged throughout this county, the State of California, or the various states of the United  
27 States of America.

28 8. JUSHEN RESTAURANTS, INC. was and is, upon information and belief, a

1 California corporation, and at all times hereinafter mentioned, an employer whose employees  
2 are engaged throughout this county, the State of California, or the various states of the United  
3 States of America.

4 9. KAHANI RESTAURANTS, LLC was and is, upon information and belief, a  
5 Delaware limited liability company, and at all times hereinafter mentioned, an employer  
6 whose employees are engaged throughout this county, the State of California, or the various  
7 states of the United States of America.

8 10. SAGE RESTAURANTS, LLC was and is, upon information and belief, a  
9 Delaware limited liability company, and at all times hereinafter mentioned, an employer  
10 whose employees are engaged throughout this county, the State of California, or the various  
11 states of the United States of America.

12 11. Plaintiff is unaware of the true names or capacities of the Defendants sued  
13 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
14 amend the complaint and serve such fictitiously named Defendants once their names and  
15 capacities become known.

16 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
17 were the partners, agents, owners, or managers of DHILLON FOODS, INC.; DHILLON &  
18 HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.; JUSHEN RESTAURANTS,  
19 INC.; KAHANI RESTAURANTS, LLC; and SAGE RESTAURANTS, LLC at all relevant  
20 times.

21 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
22 acts and omissions alleged herein was performed by, or is attributable to, DHILLON FOODS,  
23 INC.; DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.; JUSHEN  
24 RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC; SAGE RESTAURANTS, LLC;  
25 and/or DOES 1 through 10 (collectively, "Defendants" or "DHILLON FOODS"), each acting  
26 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of  
27 the other co-Defendants and was acting within the course and scope of such agency,  
28 employment, joint venture, or concerted activity with legal authority to act on the others'

1 behalf. The acts of any and all Defendants were in accordance with, and represent, the official  
2 policy of Defendants.

3 14. At all relevant times, Defendants, and each of them, ratified each and every act  
4 or omission complained of herein. At all relevant times, Defendants, and each of them, aided  
5 and abetted the acts and omissions of each and all the other Defendants in proximately causing  
6 the damages herein alleged.

7 15. Plaintiff is informed and believes, and thereon alleges, that each of said  
8 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
9 omissions, occurrences, and transactions alleged herein.

10 16. Under California law, Defendants are jointly and severally liable as employers  
11 for the violations alleged herein because they have each exercised sufficient control over the  
12 wages, hours, working conditions, and employment status of Plaintiff and class members.  
13 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and  
14 controlled their work schedule and/or conditions of employment, determined their rate of pay,  
15 and maintained their employment records. Defendants suffered or permitted Plaintiff and  
16 class members to work and/or “engaged” Plaintiff and class members so as to create a  
17 common-law employment relationship. As joint employers of Plaintiff and class members,  
18 Defendants are jointly and severally liable for the civil penalties and all other relief available  
19 to Plaintiff and class members under the law.

20 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,  
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class  
22 members because Defendants have:

23 (a) jointly exercised meaningful control over the work performed by  
24 Plaintiff and class members;

25 (b) jointly exercised meaningful control over Plaintiff’s and class members’  
26 wages, hours, and working conditions, including the quantity, quality  
27 standards, speed, scheduling, and operative details of the tasks  
28 performed by Plaintiff and class members;

- 1 (c) jointly required that Plaintiff and class members perform work which is  
2 an integral part of Defendants' businesses; and
- 3 (d) jointly exercised control over Plaintiff and class members as a matter of  
4 economic reality in that Plaintiff and class members were dependent on  
5 Defendants, who shared the power to set the wages of Plaintiff and class  
6 members and determined their working conditions, and who jointly  
7 reaped the benefits from the underpayment of their wages and  
8 noncompliance with other statutory provisions governing their  
9 employment.

10 18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times  
11 there has existed a unity of interest and ownership between Defendants such that any  
12 individuality and separateness between the entities has ceased.

13 19. DHILLON FOODS, INC.; DHILLON & HURTADO ENTERPRISES, LLC;  
14 ENCHANT FOODS, INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS,  
15 LLC; SAGE RESTAURANTS, LLC; and DOES 1 through 10 are therefore alter egos of each  
16 other.

17 20. Adherence to the fiction of the separate existence of Defendants would permit  
18 an abuse of the corporate privilege, and would promote injustice by protecting Defendants  
19 from liability for the wrongful acts committed by them under the name DHILLON FOODS.

20 21. Plaintiff further alleges, upon information and belief, that Defendants  
21 DHILLON FOODS, INC.; DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT  
22 FOODS, INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC; SAGE  
23 RESTAURANTS, LLC are alter egos of each other for the following reasons:

- 24 (e) On the California Secretary of State's website  
25 (<https://businesssearch.sos.ca.gov/>), DHILLON FOODS, INC.;  
26 DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT FOODS,  
27 INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS,  
28 LLC; and SAGE RESTAURANTS, LLC share the same entity address

and mailing address, “17315 STUDEBAKER RD STE 105,  
CERRITOS, CA 90703”;

(f) According to Defendants’ most recent “Statement of Information” forms filed with the California Secretary of State, DHILLON FOODS, INC.; DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC; and SAGE RESTAURANTS, LLC share the same officers, directors, and/or managers, including, but not limited to:

(i) Priya Dhillon, who serves as Secretary, Chief Financial Officer, and Director of DHILLON FOODS, INC. and ENCHANT FOODS, INC., and as Secretary and Director of JUSHEN RESTAURANTS, INC. She also serves as Manager of DHILLON & HURTADO ENTERPRISES, LLC; KAHANI RESTAURANTS, LLC; and SAGE RESTAURANTS, LLC;

(ii) Kimvir Dhillon, who serves as Chief Executive Officer, Chief Financial Officer, and Director of DHILLON FOODS, INC. and JUSHEN RESTAURANTS, INC. He also serves as Chief Executive Officer and Director of ENCHANT FOODS, INC.; and/or

(iii) Harmesh Dhillon, who serves as Director of DHILLON FOODS, INC. and JUSHEN RESTAURANTS, INC.

(g) According to Defendants’ most recent “Statement of Information” forms filed with the California Secretary of State, DHILLON FOODS, INC.; DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC; and SAGE RESTAURANTS, LLC share the same agent for service of process, “Priya Dhillon” or “Darin Dominguez”; and

(h) On information and belief, DHILLON FOODS, INC.; DHILLON &

HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.;  
JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC;  
and SAGE RESTAURANTS, LLC utilize the same standardized  
employment forms and issue the same employment policies.

### **GENERAL ALLEGATIONS**

22. Defendants own and operate 28 Jack in the Box restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Cerritos, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

23. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions.

24. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Cerritos, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

25. Defendants continue to employ non-exempt or hourly paid employees in California.

26. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel  
2 practices, and about the requirements of California law.

3 27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class  
4 members were not paid for all hours worked because all hours worked were not recorded.

5 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and class members were entitled to receive certain wages for  
7 overtime compensation and that they were not receiving certain wages for overtime  
8 compensation.

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and class members were entitled to receive at least minimum  
11 wages for compensation and that they were not receiving at least minimum wages for work  
12 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff  
13 and class members were not paid at least minimum wages for work done off-the-clock.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and class members were entitled to meal periods in  
16 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular  
17 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal  
18 periods and that Plaintiff and class members were not provided with all meal periods or  
19 payment of one (1) additional hour of pay at their regular rates of pay when they did not  
20 receive a timely, uninterrupted, thirty (30) minute meal period.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that Plaintiff and class members were entitled to rest periods in  
23 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)  
24 additional hour of pay at their regular rates of pay when they were not authorized and  
25 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff  
26 and class members were not authorized and permitted to take compliant rest periods, nor did  
27 Defendants provide Plaintiff and class members with payment of one (1) additional hour of  
28 pay at their regular rates of pay when they were not authorized and permitted to take a

1 compliant rest period.

2         32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
3 should have known that Plaintiff and class members were entitled to receive complete and  
4 accurate wage statements in accordance with California law. In violation of the California  
5 Labor Code, Plaintiff and class members were not provided complete and accurate wage  
6 statements.

7         33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
8 should have known that they had a duty to maintain accurate and complete payroll records in  
9 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,  
10 and intentionally failed to do so.

11         34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and class members were entitled to timely payment of all  
13 wages earned upon termination of employment. In violation of the California Labor Code,  
14 Plaintiff and class members did not receive payment of all wages due, including, but not  
15 limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or  
16 reporting time pay, within permissible time periods.

17         35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
18 should have known that Plaintiff and class members were entitled to timely payment of wages  
19 during their employment. In violation of the California Labor Code, Plaintiff and class  
20 members did not receive payment of all wages, including, but not limited to, overtime wages,  
21 minimum wages, meal and rest period premium wages, and/or reporting time pay, within  
22 permissible time periods.

23         36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and/or class members were entitled to be paid reporting time  
25 pay when they reported to work for their scheduled shift but were put to work for less than  
26 half of the regular schedule. In violation of the California Labor Code, Defendants did not  
27 pay Plaintiff and/or class members all reporting time pay due.

28         37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to suitable seating and/or  
2 have seats nearby to use during a lull in tasks that do require moving about or standing.

3 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff and/or class members were entitled to receive full  
5 reimbursement for all business-related expenses and costs they incurred during the course and  
6 scope of their employment and that they did not receive full reimbursement of applicable  
7 business-related expenses and costs incurred.

8 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
9 mentioned, Defendants knew or should have known that Defendants had a duty to provide  
10 Plaintiff and class members with written notice of the material terms of their employment with  
11 Defendants as required by the California Wage Theft Prevention Act, but willfully,  
12 knowingly, and intentionally failed to do so.

13 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
14 mentioned, Defendants knew or should have known that they had a duty to compensate  
15 Plaintiff and class members for all hours worked, and that Defendants had the financial ability  
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and  
17 falsely represented to Plaintiff and class members that they were properly denied wages, all in  
18 order to increase Defendants' profits.

#### 19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 41. At all times herein set forth, PAGA provides that any provision of law under  
21 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
22 assessed and collected by the LWDA for violations of the California Labor Code and  
23 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a  
24 civil action brought on behalf of themselves and other current or former employees pursuant  
25 to procedures outlined in California Labor Code section 2699.3.

26 42. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any  
27 person who was employed by the alleged violator and against whom one or more of the  
28 alleged violations was committed."

1           43.     Plaintiff and other current and former employees of Defendants are “aggrieved  
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current  
3 or former employees and one or more of the alleged violations were committed against them.

4           44.     Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the  
6 following requirements have been met:

7                   (a)     The aggrieved employee or representative shall give written notice by  
8                           online filing with the LWDA and by certified mail to the employer of  
9                           the specific provisions of the California Labor Code alleged to have  
10                          been violated, including the facts and theories to support the alleged  
11                          violation.

12                  (b)     An aggrieved employee’s notice filed with the LWDA pursuant to  
13                           2699.3(a) and any employer response to that notice shall be  
14                           accompanied by a filing fee of seventy-five dollars (\$75).

15                  (c)     The LWDA shall notify the employer and the aggrieved employee or  
16                           representative by certified mail that it does not intend to investigate the  
17                           alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of  
18                           the postmark date of the aggrieved employee’s notice. Upon receipt of  
19                           the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
20                           (65) calendar days of the postmark date of the aggrieved employee’s  
21                           notice, the aggrieved employee may commence a civil action pursuant  
22                           to California Labor Code section 2699 to recover civil penalties.

23           45.     Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,  
24 through Plaintiff, may pursue a civil action arising under PAGA for violations of any  
25 provision other than those listed in Section 2699.5 after the following requirements have been  
26 met:

27                   (a)     The aggrieved employee or representative shall give written notice by  
28                           online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have  
2 been violated (other than those listed in Section 2699.5), including the  
3 facts and theories to support the alleged violation.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
5 2699.3(c) and any employer response to that notice shall be  
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The employer may cure the alleged violation within thirty-three (33)  
8 calendar days of the postmark date of the notice sent by the aggrieved  
9 employee or representative. The employer shall give written notice  
10 within that period of time by certified mail to the aggrieved employee or  
11 representative and by online filing with the LWDA if the alleged  
12 violation is cured, including a description of actions taken, and no civil  
13 action pursuant to Section 2699 may commence. If the alleged violation  
14 is not cured within the 33-day period, the aggrieved employee may  
15 commence a civil action pursuant to Section 2699.

16 46. On September 4, 2020, Plaintiff provided written notice by online filing to the  
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
18 Code alleged to have been violated, including facts and theories to support the alleged  
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
21 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
22 Plaintiff PAGA Case Number LWDA-CM-805172-20. A true and correct copy of Plaintiff's  
23 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

24 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
25 sent the notice described above to the LWDA, and the LWDA has not responded that it  
26 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

27 48. Thus, Plaintiff has satisfied the administrative prerequisites under California  
28 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for

violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

49. Labor Code section 558(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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

50. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

51. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

### **CLASS ACTION ALLEGATIONS**

53. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

54. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

2 55. Plaintiff's proposed class consists of and is defined as follows:

3 All persons who worked for Defendants as non-exempt, hourly  
4 paid employees in California, from April 6, 2016 until the date of  
trial ("Class").

5 56. Plaintiff's proposed subclass consists of and is defined as follows:

6 All persons who worked for Defendants as non-exempt, hourly  
7 paid employees in California and who received at least one wage  
8 statement at any time from April 6, 2019 until the date of trial  
("Subclass").

9 57. Members of the Class and Subclass are referred to herein as "class members."

10 58. Plaintiff reserves the right to redefine the Class and Subclass and to add  
11 additional subclasses as appropriate based on further investigation, discovery, and specific  
12 theories of liability.

13 59. Due in part to the state of emergency related to the COVID-19 pandemic, the  
14 relevant time period for this class action is defined as the time period beginning April 6, 2016  
15 until the date of trial (the "relevant time period"), pursuant to Cal. Rules of Court, Appendix I,  
16 Emergency Rule No. 9.

17 60. There are common questions of law and fact as to class members that  
18 predominate over questions affecting only individual members, including, but not limited to:

- 19 (a) Whether Defendants required Plaintiff and class members to work over  
20 eight (8) hours per day, over twelve (12) hours per day, or over forty  
21 (40) hours per week and failed to pay all legally required overtime  
22 compensation to Plaintiff and class members;
- 23 (b) Whether Defendants failed to pay Plaintiff and class members at least  
24 minimum wages for all hours worked;
- 25 (c) Whether Defendants failed to provide Plaintiff and class members with  
26 meal periods;
- 27 (d) Whether Defendants failed to authorize and permit Plaintiff and class  
28 members to take rest periods;

- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay to Plaintiff and class members during their employment;
- (i) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;
- (j) Whether Defendants failed to provide Plaintiff and class members with suitable seating;
- (k) Whether Defendants failed to reimburse Plaintiff and/or class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (l) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

1           61.     There is a well-defined community of interest in the litigation and the class  
2 members are readily ascertainable:

- 3           (a)     Numerosity: The class members are so numerous that joinder of all  
4 members would be unfeasible and impractical. The membership of the  
5 entire class is unknown to Plaintiff at this time; however, the class is  
6 estimated to be greater than one hundred (100) individuals and the  
7 identity of such membership is readily ascertainable by inspection of  
8 Defendants' employment records.
- 9           (b)     Typicality: Plaintiff is qualified to, and will, fairly and adequately  
10 protect the interests of each class member with whom he has a well-  
11 defined community of interest, and Plaintiff's claims (or defenses, if  
12 any) are typical of all class members as demonstrated herein.
- 13          (c)     Adequacy: Plaintiff is qualified to, and will, fairly and adequately  
14 protect the interests of each class member with whom he has a well-  
15 defined community of interest and typicality of claims, as demonstrated  
16 herein. Plaintiff acknowledges that he has an obligation to make known  
17 to the Court any relationship, conflicts or differences with any class  
18 member. Plaintiff's attorneys, the proposed class counsel, are versed in  
19 the rules governing class action discovery, certification, and settlement.  
20 Plaintiff has incurred, and throughout the duration of this action, will  
21 continue to incur costs and attorneys' fees that have been, are, and will  
22 be necessarily expended for the prosecution of this action for the  
23 substantial benefit of each class member.
- 24          (d)     Superiority: The nature of this action makes the use of class action  
25 adjudication superior to other methods. A class action will achieve  
26 economies of time, effort, and expense as compared with separate  
27 lawsuits, and will avoid inconsistent outcomes because the same issues  
28 can be adjudicated in the same manner and at the same time for the

entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

### **FIRST CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)**

62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

63. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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.”

64. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

65. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

1 workweek.

2       66. The applicable IWC Wage Order further provides that Defendants are and were  
3 required to pay Plaintiff and class members working more than twelve (12) hours in a day,  
4 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's  
5 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the  
6 employee, including nondiscretionary bonuses and incentive pay.

7       67. California Labor Code section 510 codifies the right to overtime compensation  
8 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)  
9 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the  
10 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate  
11 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours  
12 in a day on the seventh (7th) day of work.

13       68. During the relevant time period, Defendants willfully failed to pay all overtime  
14 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and  
15 class members were not paid overtime premiums for all of the hours they worked in excess of  
16 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
17 hours in a week, because all hours worked were not recorded.

18       69. First, during the relevant time period, on information and belief, Defendants  
19 had a company-wide policy and/or practice of discouraging and impeding Plaintiff and class  
20 members from recording hours worked that were outside of their scheduled shifts in order to  
21 limit the amount of overtime employees could accrue. On information and belief, this  
22 limitation on overtime accrual was based on a company-wide policy of staffing their locations  
23 strictly based on the labor hours or labor budget set by corporate. This policy of limiting  
24 overtime, coupled with Defendants' understaffing policy, as well as the assignment of heavy  
25 workloads (*see infra*), led Plaintiff and class members to work off-the-clock before and after  
26 their scheduled shift times in order to complete their assigned tasks, but they were not  
27 provided a means to account for this time. For example, Plaintiff would be pressured to clock  
28 out at the end of his scheduled shift, when the restaurant was closing, and continue working or

1 else face potential discipline. Defendants expected employees to clock out as soon as the  
2 restaurant had closed, but also expected employees to continue serving customers until the last  
3 minute before the restaurant closed. For example, Plaintiff would clock out and spend 15-30  
4 minutes at the end of each day preparing the last of customer orders, sweeping and mopping  
5 floors, cleaning the bathrooms, and taking out the trash, tasks which he was not always able to  
6 start due to late-arriving customers. As a further example, other employees would perform  
7 tasks such as picking up ingredients and supplies from other restaurant locations and  
8 communicating with Defendants' management via their personal cellular phones. At all  
9 times, Plaintiff and class members remained under the control of Defendants. This off-the-  
10 clock work could have been recorded by Defendants, but it refused to do so to avoid payment  
11 of additional wages to Plaintiff and class members.

12 70. Second, during the relevant time period, Defendants had, and continue to have,  
13 a company-wide policy and/or practice of strictly staffing their restaurant locations based on  
14 the labor hours allocated by each restaurant's labor or payroll budget, which has resulted in,  
15 and continues to result in, chronic understaffing and a lack of adequate meal period coverage,  
16 because there were not enough employees on duty to handle the workload and attend to  
17 customers. Moreover, as stated, Defendants had a practice of failing to schedule meal periods,  
18 which further caused Plaintiff and class members to not be relieved of their duties for  
19 compliant meal periods. As a result of this inadequate meal period coverage, Plaintiff and  
20 class members were not always afforded uninterrupted 30-minute meal periods during shifts  
21 when they were entitled to receive a meal period. For example, Plaintiff missed his meal  
22 periods approximately once per week due to the heavy workload. Additionally, Plaintiff  
23 worked through meal periods or had his meal periods cut short or interrupted three (3) to four  
24 (4) days per week because there were not enough employees on duty to meet customer  
25 demands.

26 71. Further, because Defendants frowned upon employees accruing meal period  
27 penalties, Defendants' management adjusted employee time records and/or pressured  
28 employees to clock out for meal periods to reflect compliant meal periods, upon threat of

discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by Defendants. Consequently, Plaintiff and class members performed work during meal periods for which they were not paid. Moreover, Defendants' company-wide timekeeping system further prevented Plaintiff and class members from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and class members once they clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and class members from recording all hours worked when their meal periods were shortened or interrupted.

72. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties during meal periods and off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members 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 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

73. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

## **SECOND CAUSE OF ACTION**

### **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)**

74. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

1           75.     At all relevant times, California Labor Code sections 1182.12, 1194, 1197,  
2     1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the  
3     minimum wage to be paid to employees, and the payment of a wage less than the minimum so  
4     fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time  
5     during which an employee is suffered or permitted to work for the employer, whether or not  
6     required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards  
7     Act.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

8           76.     As set forth above, due to Defendants’ restrictions on overtime accrual,  
9     Defendants systematically failed to pay Plaintiff and class members for actual hours worked  
10    before and/or after scheduled shifts, because these hours were not accurately recorded. In  
11    addition, as stated, Plaintiff and class members were required to perform work off-the-clock,  
12    such as sweeping and mopping the floors; cleaning the bathrooms; taking out the trash;  
13    running errands, including picking up restaurant ingredients and supplies from Defendants’  
14    other restaurant locations; and/or responding to work-related calls and text messages from  
15    Defendants’ management.

16          77.     Further, as stated above, due to Defendants’ uniform practice of utilizing labor  
17    budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of  
18    meal period coverage, Plaintiff and class members were impeded from taking all uninterrupted  
19    meal periods to which they were entitled and were required to work off-the-clock. Moreover,  
20    as stated, in order to prevent employees from accruing meal period penalties, upon  
21    information and belief, Defendants’ management pressured employees to clock out for meal  
22    periods and/or adjusted employee time records to reflect compliant meal periods, but required  
23    them to continue working, time for which they were not paid.

24          78.     Defendants did not pay minimum wages for off-the-clock hours that Plaintiff  
25    and class members worked through that qualified for overtime premium payment. To the  
26    extent that these off-the-clock hours did not qualify for overtime premium payment,  
27    Defendants did not pay at least minimum wages for those hours worked off-the-clock in  
28    violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

79. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

### **THIRD CAUSE OF ACTION**

#### **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

##### **Violations**

##### **(Against all Defendants)**

80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

81. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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 after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

82. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

83. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period 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, 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 only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry

1 who work shifts in excess of eight (8) hours in a workday may waive one of their two meal  
2 periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, §  
3 11050(11)(D).

4 84. During the relevant time period, as stated, Defendants had, and continue to  
5 have, a company-wide policy and/or practice of labor budgeting, understaffing, and assigning  
6 heavy workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and  
7 class members from taking compliant meal periods to which they were entitled. Further, as  
8 stated, Defendants had a company-wide practice of failing to schedule meal periods, which  
9 further caused Plaintiff and class members to not be relieved of their duties for compliant  
10 meal periods. As a result, Plaintiff and class members continued to work off-the-clock during  
11 their meal periods without that time being recorded.

12 Furthermore, on information and belief, because Defendants frowned upon employees  
13 accruing meal period penalties, Defendants' management would adjust Plaintiff's and class  
14 members' time records and/or pressured employees to clock out for meal periods to reflect  
15 compliant meal periods, regardless of whether they had received a compliant meal period or  
16 not, in order to strictly limit meal penalties that would need to be paid by Defendants. In  
17 addition, as stated, Defendants implemented an electronic timekeeping system that locked  
18 Plaintiff and class members out and prevented them from clocking in early before the end of  
19 their 30-minute meal period. As a result of Defendants' timekeeping system, Plaintiff and  
20 class members were prevented from accurately recording when they had to return early from a  
21 meal period so that they could be compensated for that time worked.

22 85. As a result, Plaintiff and class members would be forced to work in excess of  
23 five (5) hours before taking a meal period, have their meal periods interrupted, and/or had to  
24 forgo their meal periods altogether. For example, during his employment, Plaintiff would  
25 completely miss meal periods at least once per week due to the heavy workload and lack of  
26 coverage, in order to assist coworkers and customers. Additionally, Plaintiff's unpaid meal  
27 periods were interrupted at least 2-3 times per week due to Defendants' management needing  
28 his assistance with processing food orders. And, at least 3-4 times per week, Plaintiff would

1 clock out for his meal period within the first five (5) hours of his shift, but would continue  
2 performing work throughout his entire meal period and attempt to take his meal period later in  
3 the day. Plaintiff and class members did not sign valid meal period waivers on days that they  
4 were entitled to meal periods and were not relieved of all duties.

5 86. At all times herein mentioned, Defendants knew or should have known that, as  
6 a result of these policies, Plaintiff and class members were prevented from being relieved of  
7 all duties and required to perform some of their assigned duties during meal periods.  
8 Defendants further knew or should have known that Defendants did not pay Plaintiff and class  
9 members meal period premium wages when meal periods were late, interrupted, shortened, or  
10 missed, because Defendants adjusted employee time records to reflect compliant meal periods,  
11 even if none were taken.

12 87. Moreover, Defendants engaged in a company-wide practice and/or policy of  
13 not paying all meal period premiums owed when compliant meal periods are not provided.  
14 Because of Defendants' practices and/or policies, Plaintiff and class members have not  
15 received premium pay for all missed, late, and interrupted meal periods.

16 88. Defendants' conduct violates the applicable IWC Wage Order, and California  
17 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore  
18 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular  
19 rate of compensation for each work day that the meal period was not provided.

#### 20 **FOURTH CAUSE OF ACTION**

##### 21 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 22 **(Against all Defendants)**

23 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
24 and every allegation set forth above.

25 90. At all relevant times herein set forth, the applicable IWC Wage Order and  
26 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class  
27 members' employment by Defendants.

28 91. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as  
2 practicable shall be in the middle of each work period” and that the “rest period time shall be  
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
5 (3½) hours.

6 92. At all relevant times, California Labor Code section 226.7 provides that no  
7 employer shall require an employee to work during any rest period mandated by an applicable  
8 order of the California IWC. To comply with its obligation to authorize and permit rest  
9 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an  
10 employer must “relinquish any control over how employees spend their break time, and  
11 relieve their employees of all duties — including the obligation that an employee remain on  
12 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*  
13 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and  
14 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover  
15 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day  
16 that a required rest period was not authorized and permitted.

17 93. During the relevant time period, Defendants regularly failed to authorize and  
18 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour  
19 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide  
20 labor budget policies and resultant understaffing, heavy workload, and lack of coverage  
21 prevented Plaintiff and class members from being relieved of all duty in order to take  
22 compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with  
23 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class  
24 members not being authorized and permitted to take rest periods.

25 94. Furthermore, upon information and belief, during the relevant time period,  
26 Defendants maintained and implemented a company-wide policy requiring that Plaintiff  
27 and/or class members remain on the work premises during their rest periods. Because  
28 Plaintiff and/or class members were restricted from leaving Defendants’ premises during rest

1 periods, they were denied the ability to use their rest periods freely for their own purposes.  
2 Thus, Defendants effectively maintained control over Plaintiff and/or class members during  
3 rest periods, and, as a result of this rest period policy, Defendants did not relinquish control  
4 over Plaintiff and/or class members during rest periods.

5 95. As a result of Defendants' practices and policies, Plaintiff and class members  
6 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
7 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
8 Plaintiff frequently worked through his shifts without taking his 10-minute rest periods five  
9 (5) to six (6) times per week due to the workload, lack of coverage, and failure to schedule  
10 rest periods. Plaintiff also had his rest periods interrupted or cut short, and would return to  
11 work when the restaurant became busy with customers.

12 96. Defendants have also engaged in a systematic, company-wide practice and/or  
13 policy of not paying rest period premiums owed when rest periods are not authorized and  
14 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed  
15 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the  
16 applicable IWC Wage Order.

17 97. Defendants' conduct violates the applicable IWC Wage Order and California  
18 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled  
19 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
20 compensation for each work day that a compliant rest period was not authorized and  
21 permitted.

## 22 **FIFTH CAUSE OF ACTION**

### 23 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 24 **Statements and Failure to Maintain Accurate Payroll Records** 25 **(Against all Defendants)**

26 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
27 and every allegation set forth above.

28 99. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and  
2 complete itemized wage statement in writing, including, but not limited to, the name and  
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total  
4 hours worked, and all applicable rates of pay.

5 100. At all relevant times, Defendants have knowingly and intentionally provided  
6 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
7 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
8 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all  
9 applicable hourly rates in effect during the pay period, including overtime rates of pay, and  
10 the corresponding number of hours worked at each hourly rate. Specifically, Defendants  
11 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

12 101. Because Defendants did not accurately record the time Plaintiff and Subclass  
13 members spent working off the clock and deducted time from Plaintiff's and Subclass  
14 members' records for meal periods that were interrupted and/or missed (and therefore time for  
15 which they should have been paid), Defendants did not list the correct amount of gross wages  
16 and net wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1)  
17 and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of  
18 hours worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed  
19 to list the applicable hourly rates of pay in effect during the pay period and corresponding  
20 accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

21 102. The wage statement deficiencies also include, without limitation, failing to list  
22 the number of piece-rate units earned and any applicable piece rate if the employee is paid on  
23 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and  
24 only the last four digits of his or her social security number or an employee identification  
25 number other than a social security number; failing to list the name and address of the legal  
26 entity that is the employer; failing to list the inclusive dates of the period for which class  
27 members were paid; and/or failing to state all hours worked as a result of not recording or  
28 stating hours worked off-the-clock.

1           103. California Labor Code section 1198 provides that the maximum hours of work  
2 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
3 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he  
4 employment of any employees for longer hours than those fixed by the order or under  
5 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC  
6 Wage Order, employers are required to keep accurate time records showing when the  
7 employee begins and ends each work period and meal period. During the relevant time  
8 period, Defendants failed, on a company-wide basis, to keep accurate records of work period  
9 and meal period start and stop times for Plaintiff and Subclass members, in violation of  
10 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of  
11 falsifying Plaintiff’s and Subclass members’ time records by deducting meal periods or  
12 recording that compliant meal periods were taken, regardless of if or when meal periods were  
13 actually taken, and thereby failed to keep accurate records of meal period start and stop times  
14 for Plaintiff and Subclass members in violation of section 1198.

15           104. California Labor Code section 1174(d) provides that “[e]very person employing  
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
18 plants or establishments at which employees are employed, payroll records showing the hours  
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
20 applicable piece rate paid to, employees employed at the respective plants or  
21 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),  
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass  
23 members showing the daily hours they worked and the wages paid thereto as a result of failing  
24 to record the off-the-clock hours that they worked.

25           105. Plaintiff and Subclass members are entitled to recover from Defendants the  
26 greater of their actual damages caused by Defendants’ failure to comply with California Labor  
27 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
28 employee.

**SIXTH CAUSE OF ACTION**  
**Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon**  
**Termination**  
**(Against all Defendants)**

106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

107. At all times relevant herein set forth, Labor Code sections 201 and 202 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.

108. On information and belief, Defendants had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

109. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

110. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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**SEVENTH CAUSE OF ACTION**  
**Violation of California Labor Code § 204—Failure to Timely Pay Wages During**  
**Employment**  
**(Against all Defendants)**

111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

112. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, that were not timely paid to Plaintiff and those class members.

113. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

114. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

115. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

116. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within the time periods

1 specified by California Labor Code section 204.

2 117. Defendants' failure to pay Plaintiff and class members all wages due violates  
3 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from  
4 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**  
7 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**  
8 **(Against all Defendants)**

9 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
10 and every allegation set forth above.

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

17 120. The applicable IWC wage order, California Code of Regulations, Title 8,  
18 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for  
19 work and does report, but is not put to work or is furnished less than half said employee’s  
20 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled  
21 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the  
22 employee’s regular rate of pay, which shall not be less than the minimum wage.”

23 121. During the relevant time period, Defendants violated California Labor Code  
24 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because  
25 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to  
26 work for their scheduled shift but were put to work for less than half of the regularly  
27 scheduled day’s work.

28 122. Defendants had a company-wide practice of sending Plaintiff and class

1 members home early from their shifts, including before they had worked at least half of their  
2 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift,  
3 due to Defendants' labor budget. For example, on at least two (2) occasions, Plaintiff was  
4 sent home an hour into his shift because business was slow. Although Plaintiff and class  
5 members would report to work based on the schedule that Defendants provided to them,  
6 Defendants would send them home before they had worked at least half of their scheduled  
7 shifts without giving them reporting time pay.

8 123. Accordingly, Plaintiff and class members were not properly compensated with  
9 reporting time pay in violation of California Labor Code section 1198.

#### 10 **NINTH CAUSE OF ACTION**

#### 11 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

#### 12 **(Against all Defendants)**

13 124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
14 and every allegation set forth above.

15 125. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover  
16 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
17 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),  
18 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section  
19 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for  
20 violations of those Labor Code sections not found in section 2699.5, including sections 516,  
21 1182.12, and 2810.5.

22 126. Defendants' conduct, as alleged herein, violates numerous sections of the  
23 California Labor Code, including, but not limited to, the following:

- 24 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC  
25 wage order for Defendants' failure to compensate Plaintiff and other  
26 aggrieved employees with all required overtime pay, as alleged herein;
- 27 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,  
28 and the applicable IWC wage order for Defendants' failure to

1 compensate Plaintiff and other aggrieved employees with at least  
2 minimum wages for all hours worked, as alleged herein;

3 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the  
4 applicable IWC wage order for Defendants' failure to provide Plaintiff  
5 and other aggrieved employees with meal periods, as alleged herein;

6 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable  
7 IWC wage order for Defendants' failure to authorize and permit  
8 Plaintiff and other aggrieved employees to take rest periods, as alleged  
9 herein;

10 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC  
11 wage order for failure to provide accurate and complete wage statements  
12 to Plaintiff and other aggrieved employees, as alleged herein;

13 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable  
14 IWC wage order for failure to maintain payroll records as alleged  
15 herein;

16 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all  
17 earned wages upon termination, as alleged herein;

18 (h) Violation of Labor Code section 204 for failure to pay all earned wages  
19 during employment, as alleged herein;

20 (a) Violation of Labor Code section 1198 and the applicable IWC wage  
21 order for failure to pay reporting time pay when Plaintiff and other non-  
22 party Aggrieved Employees were put to work for less than half of their  
23 regular scheduled shifts, as alleged herein;

24 (b) Violation of Labor Code section 1198 for failing to provide suitable  
25 seating to Plaintiff and other aggrieved employees, as set forth below;

26 (i) Violation of Labor Code section 2802 for failure to reimburse other  
27 aggrieved employees for all business expenses necessarily incurred, as  
28 set forth below; and

1 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to  
2 provide written notice of information material to Plaintiff's and other  
3 aggrieved employees' employment with Defendants, as set forth below.

4 127. At all relevant times herein, California Labor Code section 1198 makes it  
5 illegal to employ an employee under conditions of labor that are prohibited by the applicable  
6 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of  
7 labor fixed by the commission shall be the . . . standard conditions of labor for employees.  
8 The employment of any employee . . . under conditions of labor prohibited by the order is  
9 unlawful."

10 128. California Code of Regulations, Title 8, section 11050(14)(B) provides that  
11 "[w]hen employees are not engaged in the active duties of their employment and the nature of  
12 the work requires standing, an adequate number of suitable seats shall be placed in reasonable  
13 proximity to the work area and employees shall be permitted to use such seats when it does  
14 not interfere with the performance of their duties."

15 129. During the relevant time period, Defendants violated California Labor Code  
16 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because  
17 Plaintiff and other aggrieved employees are not allowed to sit, even during lulls in their work  
18 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

19 130. As stated, Plaintiff alleges that Defendants' California restaurants are generally  
20 similar in their layout and design and there was, and continues to be, space near their work  
21 areas (with reasonable or no modification to these work areas) to allow for the presence and  
22 use of a seat or stool by Plaintiff and other aggrieved employees during lulls in operation.  
23 Defendants could have provided Plaintiff and other aggrieved employees with a seat or stool  
24 in their work areas, but instead denied Plaintiff and other aggrieved employees suitable  
25 seating altogether and effectively forced Plaintiff and other aggrieved employees to stand  
26 throughout the day.

27 131. Defendants did not provide Plaintiff and other aggrieved employees with seats  
28 or stools in reasonable proximity to their work area to allow them to use seats when it would

1 not interfere with the performance of their duties for times when they were not engaged in  
2 active duties that require standing. In other words, to the extent Plaintiff and other aggrieved  
3 employees have engaged in duties in which the nature of the work required standing,  
4 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,  
5 Defendants did not inform Plaintiff and other aggrieved employees of their rights to a seat or  
6 stool under California law.

7 132. As a result of Defendants' company-wide policy and/or practice prohibiting  
8 employees from sitting at any time, even when they are not engaged in active duties requiring  
9 standing, and company-wide failure to provide seats in reasonable proximity to their work  
10 areas, Plaintiff and other aggrieved employees were forced to stand during shifts and denied  
11 seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved  
12 employees violated and continues to violate California Labor Code section 1198 and IWC  
13 Wage Order 5-2001, Section 14(B). Plaintiff and other aggrieved employees are therefore  
14 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

15 133. At all times herein set forth, California Labor Code section 2802 provides that  
16 an employer must reimburse employees for all necessary expenditures and losses incurred by  
17 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is  
18 to prevent employers from passing off their cost of doing business and operating expenses on  
19 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
20 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w] tools or  
21 equipment are required by the employer or are necessary to the performance of a job, such  
22 tools and equipment shall be provided and maintained by the employer, except that an  
23 employee whose wages are at least two (2) times the minimum wage may provide and  
24 maintain hand tools and equipment customarily required by the particular trade or craft."

25 134. During the relevant time period, Defendants had a company-wide policy of  
26 requiring other aggrieved employees to utilize their own personal cellular phones and cellular  
27 data to carry out their job duties, but Defendants failed to reimburse them for the costs of their  
28 work-related cellular phone expenses. Additionally, during the relevant time period,

1 Defendants had a company-wide policy of requiring other aggrieved employees to travel in  
2 their own personal vehicles to pick up ingredients and supplies from Defendants' other  
3 restaurant locations, but did not reimburse them for their travel expenses, including mileage.

4 135. Also, during the relevant time period, Defendants, on a company-wide basis,  
5 required Plaintiff and other aggrieved employees to report to work wearing clean uniforms,  
6 including uniform shirts, hats, and/or aprons, which forced other aggrieved employees to wash  
7 their uniforms more frequently than they would otherwise do laundry, and incur expenses for  
8 doing so. For example, due to the nature of restaurant work, other aggrieved employees'  
9 uniforms would become stained, sweaty, dirty, and/or acquire an unpleasant odor such that  
10 they were unable to mix these clothes in with other laundry. As a result, they had to wash  
11 their uniform items separately from their other clothing, or more frequently than other items,  
12 thus incurring additional laundry expenses for the upkeep of their uniforms.

13 136. Defendants could have provided other aggrieved employees with the actual  
14 tools required for use on the job, including company phones and company vehicles, as well as  
15 an adequate number of uniforms or access to laundering services. Or, Defendants could have  
16 reimbursed other aggrieved employees for their cost of their cellular phone usage, mileage,  
17 and laundering expenses. Instead, Defendants passed these operating costs off onto other  
18 aggrieved employees.

19 137. Thus, Defendants had, and continue to have, a company-wide policy and/or  
20 practice of not reimbursing employees for expenses necessarily incurred in violation of  
21 California Labor Code section 2802. Other aggrieved employees are therefore entitled to  
22 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 138. California's Wage Theft Prevention Act was enacted to ensure that employers  
24 provide employees with basic information material to their employment relationship at the  
25 time of hiring, and to ensure that employees are given written and timely notice of any  
26 changes to basic information material to their employment. Codified at California Labor  
27 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an  
28 employer must provide written notice to employees containing basic and material payroll

1 information, including, among other things, the rate(s) of pay and basis thereof, whether paid  
2 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for  
3 overtime, the regular payday designated by the employer, and any allowances claims as part  
4 of the minimum wage, including meal or lodging allowances. Labor Code section  
5 2810.5(a)(1)(A)-(C).

6 139. During the relevant time period, Defendants failed to provide Plaintiff and  
7 other aggrieved employees with written notice that lists all the requisite information set forth  
8 in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other  
9 aggrieved employees with written notice of basic information regarding their employment  
10 with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved  
11 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections  
12 2699(a), (f), and (g).

#### 13 **TENTH CAUSE OF ACTION**

#### 14 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### 15 **Unlawful Business Practices**

#### 16 **(Against all Defendants)**

17 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
18 and every allegation set forth above.

19 141. Defendants are "persons" as defined by California Business & Professions  
20 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,  
21 and/or associations.

22 142. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
23 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has  
24 suffered injury in fact and has lost money as a result of Defendants' unlawful business  
25 practices. Plaintiff seeks to enforce important rights affecting the public interest within the  
26 meaning of Code of Civil Procedure section 1021.5.

27 143. Defendants' activities, as alleged herein, are violations of California law, and  
28 constitute unlawful business acts and practices in violation of California Business &

1 Professions Code sections 17200, *et seq.*

2 144. A violation of California Business & Professions Code sections 17200, *et seq.*  
3 may be predicated on the violation of any state or federal law. In the instant case, Defendants'  
4 policies and practices have violated state law in at least the following respects:

- 5 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and  
6 class members, to work overtime without paying them proper  
7 compensation in violation of California Labor Code sections 510 and  
8 1198 and the applicable IWC Order, as alleged herein;
- 9 (b) Failing to pay at least minimum wage to Plaintiff and class members in  
10 violation of California Labor Code sections 1182.12, 1194, 1197,  
11 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 12 (c) Failing to provide uninterrupted meal periods to Plaintiff and class  
13 members in violation of California Labor Code sections 226.7, 512(a),  
14 516, 1198, and the applicable IWC Order, as alleged herein;
- 15 (d) Failing to authorize and permit Plaintiff and class members to take  
16 uninterrupted rest periods in violation of California Labor Code sections  
17 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 18 (e) Failing to provide Plaintiff and class members with accurate wage  
19 statements and failing to maintain accurate payroll records in violation  
20 of California Labor Code sections 226(a), 1174(d), 1198, and the  
21 applicable IWC Order, as alleged herein;
- 22 (f) Failing timely to pay all earned wages to Plaintiff and class members in  
23 violation of California Labor Code section 204 and the applicable IWC  
24 Order, as alleged herein;
- 25 (g) Violation of Labor Code section 1198 and the applicable IWC wage  
26 order for failure to pay reporting time pay when other aggrieved  
27 employees were put to work for less than half of their regular scheduled  
28 shifts, as alleged herein; and

1 (h) Failing to provide written notice of information material to Plaintiff's  
2 and class members' employment with Defendants in violation of Labor  
3 Code section 2810.5(a)(1)(A)-(C), as set forth below.

4 145. At all relevant times herein, California's Wage Theft Prevention Act was  
5 enacted to ensure that employers provide employees with basic information material to their  
6 employment relationship at the time of hiring, and to ensure that employees are given written  
7 and timely notice of any changes to basic information material to their employment. Codified  
8 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the  
9 time of hiring, an employer must provide written notice to employees containing basic and  
10 material payroll information, including, among other things, the rate(s) of pay and basis  
11 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,  
12 including any rates for overtime, the regular payday designated by the employer, and any  
13 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor  
14 Code § 2810.5(a)(1)(A)-(C).

15 146. At all relevant times, on information and belief, Defendants failed, on a  
16 company-wide basis, to provide written notice to Plaintiff and class members that lists the  
17 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure  
18 to provide Plaintiff and class members with written notice of basic information regarding their  
19 employment with Defendants is in violation of Labor Code section 2810.5.

20 147. As a result of the violations of California law herein described, Defendants  
21 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members  
22 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged  
23 herein.

24 148. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
25 Plaintiff and class members are entitled to restitution of the wages withheld and retained by  
26 Defendants during a period that commences four years prior to the filing of this complaint; a  
27 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and  
28 class members; and an award of attorneys' fees pursuant to California Code of Civil

1 Procedure section 1021.5 and other applicable laws; and an award of costs.

2 **ELEVENTH CAUSE OF ACTION**

3 **Violation of California Business & Professions Code §§ 17200, et seq. –**

4 **Unfair Business Practices**

5 **(Against all Defendants)**

6 149. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
7 and every allegation set forth above.

8 150. Defendants are “persons” as defined by California Business & Professions  
9 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,  
10 and/or associations.

11 151. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,  
12 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered  
13 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff  
14 seeks to enforce important rights affecting the public interest within the meaning of Code of  
15 Civil Procedure section 1021.5.

16 152. Defendants’ activities, namely Defendants’ company-wide practice and/or  
17 policy of not paying Plaintiff and class members all meal and rest period premium wages due  
18 to them under Labor Code section 226.7, deprived Plaintiff and class members of the  
19 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
20 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to  
21 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*  
22 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were  
23 guaranteed to Plaintiff and class members as part of their employment with Defendants, and  
24 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an  
25 unfair business practice in violation of California Business & Professions Code sections  
26 17200, *et seq.* (*Id.*)

27 153. A violation of California Business & Professions Code sections 17200, *et seq.*  
28 may be predicated on any unfair business practice. In the instant case, Defendants’ policies

1 and practices have violated the spirit of California's meal and rest period laws and constitute  
2 acts against the public policy behind these laws.

3 154. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
4 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory  
5 benefits implemented by section 226.7 withheld and retained by Defendants during a period  
6 that commences four years prior to the filing of this complaint; a permanent injunction  
7 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to  
8 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil  
9 Procedure section 1021.5 and other applicable laws; and an award of costs.

#### 10 **REQUEST FOR JURY TRIAL**

11 Plaintiff requests a trial by jury.

#### 12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment  
14 against Defendants, jointly and severally, as follows:

15 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in  
16 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff  
17 reserves the right to amend her prayer for relief to seek a different amount.

#### 18 **Class Certification**

- 19 2. That this case be certified as a class action;  
20 3. That Plaintiff be appointed as the representative of the Class and Subclass;  
21 4. That counsel for Plaintiff be appointed as class counsel.

#### 22 **As to the First Cause of Action**

23 5. That the Court declare, adjudge, and decree that Defendants violated California  
24 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to  
25 pay all overtime wages due to Plaintiff and class members;

26 6. For general unpaid wages at overtime wage rates and such general and special  
27 damages as may be appropriate;

28 7. For pre-judgment interest on any unpaid overtime compensation commencing

1 from the date such amounts were due, or as otherwise provided by law;

2 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
3 California Labor Code section 1194(a); and

4 9. For such other and further relief as the Court may deem equitable and  
5 appropriate.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California  
8 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay  
9 minimum wages to Plaintiff and class members;

10 11. For general unpaid wages and such general and special damages as may be  
11 appropriate;

12 12. For pre-judgment interest on any unpaid compensation from the date such  
13 amounts were due, or as otherwise provided by law;

14 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
15 California Labor Code section 1194(a);

16 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

17 15. For such other and further relief as the Court may deem equitable and  
18 appropriate.

19 **As to the Third Cause of Action**

20 16. That the Court declare, adjudge, and decree that Defendants violated California  
21 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by  
22 willfully failing to provide all meal periods to Plaintiff and class members;

23 17. That the Court make an award to the Plaintiff and class members of one (1)  
24 hour of pay at each employee's regular rate of pay for each workday that a meal period was  
25 not provided;

26 18. For all actual, consequential, and incidental losses and damages, according to  
27 proof;

28 19. For premiums pursuant to California Labor Code section 226.7(b);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fourth Cause of Action**

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 32. For injunctive relief pursuant to California Labor Code section 226(h);

3 33. For statutory penalties pursuant to California Labor Code section 226(e);

4 34. For attorneys' fees and costs pursuant to California Labor Code section  
5 226(e)(1); and

6 35. For such other and further relief as the Court may deem equitable and  
7 appropriate.

8 **As to the Sixth Cause of Action**

9 36. That the Court declare, adjudge and decree that Defendants violated California  
10 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,  
11 meal and rest period premiums, and/or reporting time pay owed at the time of termination of  
12 the employment of Plaintiff and other terminated class members;

13 37. For all actual, consequential and incidental losses and damages, according to  
14 proof;

15 38. For waiting time penalties according to proof pursuant to California Labor  
16 Code section 203 for all employees who have left Defendants' employ;

17 39. For pre-judgment interest on any unpaid wages from the date such amounts  
18 were due, or as otherwise provided by law;

19 40. For attorneys' fees pursuant to California Code of Civil Procedure section  
20 1021.5, or as otherwise provided by law; and

21 41. For such other and further relief as the Court may deem equitable and  
22 appropriate.

23 **As to the Seventh Cause of Action**

24 42. That the Court declare, adjudge and decree that Defendants violated California  
25 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members  
26 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay  
27 during their employment;

28 43. For all actual, consequential and incidental losses and damages, according to

1 proof;

2 44. For statutory penalties according to proof pursuant to California Labor Code  
3 section 210;

4 45. For pre-judgment interest on any unpaid wages from the date such amounts  
5 were due, or as otherwise provided by law;

6 46. For attorneys' fees pursuant to California Code of Civil Procedure section  
7 1021.5, or as otherwise provided by law; and

8 47. For such other and further relief as the Court may deem equitable and  
9 appropriate.

10 **As to the Eighth Cause of Action**

11 48. That the Court declare, adjudge and decree that Defendants violated California  
12 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by  
13 failing to provide Plaintiff and class members with reporting time pay;

14 49. For all actual, consequential and incidental losses and damages, according to  
15 proof;

16 50. For pre-judgment interest on any unpaid wages from the date such amounts  
17 were due, or as otherwise provided by law; and

18 51. For such other and further relief as the Court may deem equitable and  
19 appropriate.

20 **As to the Ninth Cause of Action**

21 52. That the Court declare, adjudge and decree that Defendants violated the  
22 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:  
23 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and  
24 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and  
25 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and  
26 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage  
27 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay  
28 all earned wages upon termination); 204 (by failing timely to pay all earned wages during

employment); 1198 (by failing to provide suitable seating); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

53. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

54. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

55. For pre-judgment and post-judgment interest as provided by law; and

56. For such other and further relief as the Court may deem equitable and appropriate.

#### **As to the Tenth Cause of Action**

57. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing timely to pay Plaintiff and class members all earned wages during employment, failing to provide reporting time pay, and failing to provide written notice of information material to employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

58. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

59. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by  
2 Defendants as a result of violations of California Business & Professions Code sections 17200  
3 *et seq.*;

4 60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
5 California Code of Civil Procedure section 1021.5; and

6 61. For such other and further relief as the Court may deem equitable and  
7 appropriate.

8 **As to the Eleventh Cause of Action**

9 62. That the Court declare, adjudge and decree that Defendants' conduct of denying  
10 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes  
11 an unfair business practice in violation of California Business and Professions Code sections  
12 17200, *et seq.*;

13 63. For restitution of the statutory benefits under section 226.7 unfairly withheld  
14 from Plaintiff and class members and prejudgment interest from the day such amounts were  
15 due and payable;

16 64. For the appointment of a receiver to receive, manage and distribute any and all  
17 funds disgorged from Defendants and determined to have been wrongfully acquired by  
18 Defendants as a result of violations of California Business & Professions Code sections 17200  
19 *et seq.*;

20 65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
21 California Code of Civil Procedure section 1021.5;

22 66. For pre-judgment and post-judgment interest as provided by law; and

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1           67.     For such other and further relief as the Court may deem equitable and  
2 appropriate.

3  
4 Dated: November 9, 2020

Respectfully submitted,

Capstone Law APC

6  
7 By: 

Mark A. Ozzello  
Brandon K. Brouillette  
Joseph Hakakian

Attorneys for Angel Salcedo

# EXHIBIT 1

MICHELLE KENNEDY  
310.712.8146 Direct  
Michelle.Kennedy@capstonelawyers.com

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September 4, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency  
ATTN: PAGA Administrator  
(<https://dir.tfaforms.net/266>)

Subject: *Angel Salcedo v. Dhillon Foods, Inc., et al.*

Dear PAGA Administrator:

This office represents Angel Salcedo in connection with his claims under the California Labor Code. Mr. Salcedo was an employee of DHILLON FOODS, INC.; DHILLON & HURTADO ENTERPRISES, LLC; ENCHANT FOODS, INC.; JUSHEN RESTAURANTS, INC.; KAHANI RESTAURANTS, LLC; and/or SAGE RESTAURANTS, LLC. For the purpose of this letter, Mr. Salcedo collectively refers to these entities as “DHILLON FOODS.”

The employers may be contacted directly at the addresses below:

DHILLON FOODS, INC.  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

DHILLON & HURTADO ENTERPRISES,  
LLC  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

ENCHANT FOODS, INC.  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

JUSHEN RESTAURANTS, INC.  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

KAHANI RESTAURANTS, LLC  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

SAGE RESTAURANTS, LLC  
17315 STUDEBAKER RD, STE 105  
CERRITOS, CA 90703

Mr. Salcedo intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Salcedo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DHILLON FOODS as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DHILLON FOODS employed Mr. Salcedo as an hourly paid, non-exempt employee from approximately December 2018 to September 2019. Mr. Salcedo worked for DHILLON FOODS as a Cashier and Cook at its restaurant located in Hermosa Beach, California. During his employment, Mr. Salcedo typically worked eight (8) to nine (9) hours per day, five (5) to six (6) days per week, in the afternoons and evenings. At the time Mr. Salcedo's employment with DHILLON FOODS ended, he earned approximately \$12.00 per hour. His job duties included, without limitation, operating the cash register; taking customers' orders; serving food and drink to customers; and cleaning the kitchen, restroom, and dining areas.

DHILLON FOODS committed one or more of the following Labor Code violations against Mr. Salcedo, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):<sup>1</sup>

### **DHILLON FOODS's Company-Wide and Uniform Payroll and HR Practices**

DHILLON FOODS, INC.; ENCHANT FOODS, INC.; and JUSHEN RESTAURANTS, INC. are California corporations, and DHILLON & HURTADO ENTERPRISES, LLC; KAHANI RESTAURANTS, LLC; and SAGE RESTAURANTS, LLC are Delaware limited liability companies. On information and belief, DHILLON FOODS is headquartered at 17315 Studebaker Road, Suite 105, Cerritos, California 90703. DHILLON FOODS owns and operates approximately 28 Jack in the Box restaurant locations in California. Upon information and belief, DHILLON FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cerritos, California, for all non-exempt, hourly paid employees working for DHILLON FOODS in California, including Mr. Salcedo and other aggrieved employees. At all relevant times, DHILLON FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Salcedo and other aggrieved employees, regardless of its location or position.

Upon information and belief, DHILLON FOODS maintains a centralized Payroll department at its corporate headquarters in Cerritos, California, which processes payroll for all non-exempt, hourly paid employees working for DHILLON FOODS in California, including Mr. Salcedo and other aggrieved employees. Further, DHILLON FOODS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Salcedo and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, DHILLON FOODS utilized the same methods and formulas when calculating wages due to Mr. Salcedo and other aggrieved employees in California.

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<sup>1</sup> These facts, theories, and claims are based on Mr. Salcedo's experience and counsel's review of those records currently available relating to Mr. Salcedo's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Salcedo reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

## **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 working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working 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 remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DHILLON FOODS willfully failed to pay all overtime wages owed to Mr. Salcedo and other aggrieved employees. During the relevant time period, Mr. Salcedo 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, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, upon information and belief, DHILLON FOODS had, and continues to have, a company-wide policy of discouraging and impeding Mr. Salcedo and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Thus, Mr. Salcedo and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not provided a means by DHILLON FOODS to account for this time. For example, Mr. Salcedo would be pressured to clock out at the end of his scheduled shift, when the restaurant was closing, and continue working or else face potential discipline. DHILLON FOODS expected employees to clock out as soon as the restaurant had closed, but also expected employees to continue serving customers until the last minute before the restaurant closed. Thus, Mr. Salcedo would clock out and spend 15-30 minutes at the end of each day preparing the last of customer orders, sweeping and mopping floors, cleaning the bathrooms, and taking out the trash, tasks which he was not always able to start due to late-arriving customers. At all times, Mr. Salcedo and other aggrieved employees remained under the control of DHILLON FOODS. This off-the-clock work could have been recorded by DHILLON FOODS, but it refused to do so to avoid payment of additional wages to Mr. Salcedo and other aggrieved employees.

Second, upon information and belief, DHILLON FOODS had, and continues to have, a company-wide policy and/or practice of requiring other aggrieved employees to perform tasks off-the-clock, such as picking up ingredients and supplies from other restaurant locations and communicating with DHILLON FOODS’s management via their personal cellular phones. Upon information and belief, DHILLON FOODS expected other aggrieved employees to promptly respond to calls and text messages from DHILLON FOODS’s supervisors on their personal cellular phones. As a result, other aggrieved employees spent time responding to DHILLON FOODS’s communications to them regarding work-related matters, such as obtaining restaurant supplies and inventory, time for which they were not paid.

Third, on information and belief, DHILLON FOODS had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each restaurant’s labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on

duty to handle the workload and attend to customers. As a result of this inadequate meal period coverage, Mr. Salcedo and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Salcedo missed his meal periods approximately once per week due to the heavy workload. Additionally, Mr. Salcedo worked through meal periods or had his meal periods cut short or interrupted three (3) to four (4) days per week because there were not enough employees on duty to meet customer demands.

Moreover, as stated, DHILLON FOODS had a practice of failing to schedule meal periods, which further caused Mr. Salcedo and other aggrieved employees to not be relieved of their duties for compliant meal periods. Further, because DHILLON FOODS frowned upon employees accruing meal period penalties, DHILLON FOODS management adjusted employee time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DHILLON FOODS. Consequently, Mr. Salcedo and other aggrieved employees performed work during meal periods for which they were not paid. Moreover, DHILLON FOODS's company-wide timekeeping system further prevented Mr. Salcedo and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Salcedo and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed. Thus, DHILLON FOODS's timekeeping system further prevented Mr. Salcedo and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

DHILLON FOODS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Salcedo and other aggrieved employees were working before or after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Salcedo and other aggrieved employees 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 qualified for overtime premium pay. Therefore, Mr. Salcedo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, DHILLON FOODS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DHILLON FOODS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DHILLON FOODS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, DHILLON FOODS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Salcedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 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 so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 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.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As set forth above, due to DHILLON FOODS’s restrictions on overtime accrual, DHILLON FOODS systematically failed to pay Mr. Salcedo and other aggrieved employees for actual hours worked before and/or after scheduled shifts, because these hours were not accurately recorded. In addition, as stated, Mr. Salcedo and other aggrieved employees were required to perform work off-the-clock, such as sweeping and mopping the floors; cleaning the bathrooms; taking out the trash; running errands, including picking up restaurant ingredients and supplies from other DHILLON FOODS’s restaurant locations; and/or responding to work-related calls and text messages from DHILLON FOODS’s management.

Further, as stated above, due to DHILLON FOODS’s uniform practice of utilizing labor budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of meal period coverage, Mr. Salcedo and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, DHILLON FOODS’s management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, DHILLON FOODS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, DHILLON FOODS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, DHILLON FOODS regularly failed to pay at least minimum wages to Mr. Salcedo 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.

Mr. Salcedo and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods**

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods 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(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 after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period 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, 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 only if the first meal period was not waived.

As set forth above, DHILLON FOODS has, and continues to have, a company-wide policy and/or practice of labor budgeting, understaffing, and assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Salcedo and other aggrieved employees from taking compliant meal periods to which they were entitled. As a result, Mr. Salcedo and other aggrieved employees continued to work off-the-clock during their meal periods without that time being recorded.

Additionally, DHILLON FOODS did not schedule meal periods, resulting in Mr. Salcedo and other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload. Furthermore, because DHILLON FOODS frowned upon employees accruing meal period penalties, DHILLON FOODS's management adjusted employee time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DHILLON FOODS. Moreover, as described above, DHILLON FOODS implemented an electronic timekeeping system that locked Mr. Salcedo and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of DHILLON FOODS's timekeeping system, Mr. Salcedo and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked.

As a result, Mr. Salcedo and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Salcedo would completely miss meal periods at least once per week due to the heavy workload and lack of coverage, in order to assist coworkers and customers. Additionally, Mr. Salcedo's unpaid meal periods were interrupted at least 2-3 times per week due to DHILLON FOODS's management needing his assistance with processing food orders. And, at least 3-4 times per week, Mr. Salcedo would clock out for his meal period within the first five (5) hours of his shift, but would continue performing work throughout his entire meal period and attempt to take his meal period later in the day.

Moreover, DHILLON FOODS 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 worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Cortez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

DHILLON FOODS knew or should have known that as a result of its policies, Mr. Salcedo and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DHILLON FOODS further knew or should have known that it did not pay Mr. Salcedo and

other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

DHILLON FOODS also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Salcedo and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that DHILLON FOODS did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DHILLON FOODS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, DHILLON FOODS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Salcedo and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods**

California Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order require employers to provide rest periods 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. 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 authorize and permit 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, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, DHILLON FOODS regularly failed to authorize and permit Mr. Salcedo and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DHILLON FOODS's company-wide labor budget policies and resultant understaffing, heavy workload, and lack of coverage prevented Mr. Salcedo and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. DHILLON FOODS also failed to schedule rest periods, which, coupled with DHILLON FOODS's failure to provide adequate rest period coverage, further led to Mr. Salcedo and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, DHILLON FOODS maintained and implemented a company-wide practice and/or policy requiring that Mr. Salcedo and other aggrieved employees

remain on DHILLON FOODS's premises during their rest periods. Because Mr. Salcedo and other aggrieved employees were restricted from leaving the DHILLON FOODS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, DHILLON FOODS effectively maintained control over Mr. Salcedo and other aggrieved employees during rest periods, and, as a result of this rest period policy, DHILLON FOODS did not relinquish control over Mr. Salcedo and other aggrieved employees during rest periods.

As a result, Mr. Salcedo and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Salcedo frequently worked through his shifts without taking his 10-minute rest periods five (5) to six (6) times per week due to the workload, lack of coverage, and failure to schedule rest periods. Mr. Salcedo also had his rest periods interrupted or cut short, and would return to work when the restaurant became busy with customers.

DHILLON FOODS 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 authorized and permitted. Alternatively, to the extent that DHILLON FOODS did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because DHILLON FOODS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, DHILLON FOODS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Salcedo and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DHILLON FOODS has not provided Mr. Salcedo and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(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. Further, Labor Code section 226.3 provides that any employer who violates section 226(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(a).

During the relevant time period, DHILLON FOODS has knowingly and intentionally provided Mr. Salcedo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DHILLON FOODS issued uniform wage statements to Mr. Salcedo and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of

pay, and the corresponding number of hours worked at each hourly rate. Specifically, DHILLON FOODS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because DHILLON FOODS did not record the time Mr. Salcedo and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), DHILLON FOODS did not list the correct amount of gross wages and net wages earned by Mr. Salcedo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DHILLON FOODS failed to accurately list the total number of hours worked by Mr. Salcedo and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because DHILLON FOODS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, DHILLON FOODS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, DHILLON FOODS also failed to list the correct amount of net wages in violation of section 226(a)(5). DHILLON FOODS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(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 "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." 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(d). During the relevant time period, and in violation of Labor Code section 1174(d), DHILLON FOODS willfully failed to maintain accurate payroll records for Mr. Salcedo 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 further 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, DHILLON FOODS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Salcedo and other

aggrieved employees, in violation of section 1198. As stated, DHILLON FOODS engaged in a company-wide practice and/or policy of falsifying Mr. Salcedo's and other aggrieved employees' time records by recording that compliant meal periods were taken, regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal period start and stop times for Mr. Salcedo and other aggrieved employees in violation of section 1198. Also, in light of DHILLON FOODS's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DHILLON FOODS kept no records of meal start and end times for second meal periods in violation of section 1198.

Because DHILLON FOODS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Salcedo 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, Mr. Salcedo 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.

Mr. Salcedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code § 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, DHILLON FOODS failed to pay Mr. Salcedo and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Salcedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(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.

On information and belief, DHILLON FOODS had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202.

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

Mr. Salcedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

DHILLON FOODS's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Salcedo and other aggrieved employees during lulls in operation. DHILLON FOODS could provide Mr. Salcedo and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Salcedo and other aggrieved employees to stand throughout the day.

DHILLON FOODS did not provide Mr. Salcedo and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Salcedo and other aggrieved employees engaged in duties in which the nature of the work required standing, DHILLON FOODS denied them the use

of seats nearby during lulls in their work duties. Moreover, DHILLON FOODS did not inform Mr. Salcedo and other aggrieved employees of their rights to a seat or stool under California law.

As a result of DHILLON FOODS's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Salcedo and other aggrieved employees were forced to stand during shifts and denied seats. DHILLON FOODS's failure to provide suitable seating to Mr. Salcedo and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Salcedo and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DHILLON FOODS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – 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 further 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 11050(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.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

DHILLON FOODS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because DHILLON FOODS failed to pay Mr. Salcedo 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. DHILLON FOODS had a company-wide practice of sending Mr. Salcedo and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Salcedo or other aggrieved employees for half of their scheduled shift. For example, on at least two (2) occasions, Mr. Salcedo was sent home an hour into his shift because business was slow. Although Mr. Salcedo and other aggrieved employees would report to work based on the schedule that AMC provided to them, DHILLON FOODS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Salcedo and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Salcedo and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (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.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, 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."

First, upon information and belief, during the relevant time period, DHILLON FOODS, on a company-wide basis, required that other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Although DHILLON FOODS required other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, DHILLON FOODS failed to fully reimburse them for this cost.

Second, DHILLON FOODS had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up food and restaurant supplies from other restaurant locations, but failed to reimburse them for all costs of travel, including mileage. Although DHILLON FOODS required other aggrieved employees to utilize their own vehicles to travel to and from the other restaurant locations, DHILLON FOODS did not reimburse them for all of their travel expenses.

Third, on a company-wide basis, DHILLON FOODS, on a company-wide basis, expected Mr. Salcedo and other aggrieved employees to report to work in clean and presentable uniforms, including uniform shirts, hats, and/or aprons, which forced other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, due to the nature of restaurant work, other aggrieved employees' uniforms would become stained, sweaty, dirty, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, or more frequently than other items, thus incurring additional laundry expenses for the upkeep of their uniforms.

DHILLON FOODS could have provided Mr. Salcedo and other aggrieved employees with the actual tools required for use on the job, including company phones, company vehicles, as well as an adequate number of uniforms or access to laundering services. Or, DHILLON FOODS could have reimbursed Mr. Salcedo and other aggrieved employees for their cost of their cellular phone usage, mileage, and laundering expenses. Instead, DHILLON FOODS passed these operating costs off onto Mr. Salcedo and other aggrieved employees. At all relevant times, Mr. Salcedo did not earn at least two (2) times the minimum wage.

Thus, DHILLON FOODS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code

section 2802. Mr. Salcedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

**Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – 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 claims 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.

DHILLON FOODS failed to provide Mr. Salcedo and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). DHILLON FOODS's failure to provide Mr. Salcedo and other aggrieved employees with written notice of basic information regarding their employment with DHILLON FOODS is in violation of Labor Code section 2810.5.

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

**California Labor Code § 558(a)**

California Labor Code section 558(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 . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(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." DHILLON FOODS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Salcedo's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Salcedo seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Salcedo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against DHILLON FOODS for violations of California Labor Code sections 201,

202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Salcedo seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

### **Pre-Litigation Demand**

This notice shall further serve as Mr. Salcedo's reasonable attempt to settle his dispute with DHILLON FOODS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform DHILLON FOODS of Mr. Salcedo's aforementioned grievances and the proposed remedies as detailed below, while affording DHILLON FOODS a reasonable opportunity to satisfy Mr. Salcedo's demands.

Demand is hereby made that DHILLON FOODS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. DHILLON FOODS shall pay Mr. Salcedo and all other aggrieved employees employed by DHILLON FOODS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. DHILLON FOODS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. DHILLON FOODS shall conduct a survey or interview all current and former aggrieved employees in California who worked for DHILLON FOODS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel, uniform and laundering costs, cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. DHILLON FOODS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. DHILLON FOODS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. DHILLON FOODS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for DHILLON FOODS's benefit, including, but not limited to, costs of travel, uniform and laundering expenses, and cellular phone expenses, as required by Labor Code section 2802.
6. DHILLON FOODS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. DHILLON FOODS shall provide Mr. Salcedo and all aggrieved employees employed by DHILLON FOODS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. DHILLON FOODS shall implement and provide suitable seating to all aggrieved employees.
9. DHILLON FOODS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. DHILLON FOODS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

Michelle Kennedy  
Capstone Law APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067  
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized flourish at the end.

Michelle Kennedy

Copy: DHILLON FOODS, INC. (via U.S. Certified Mail); DHILLON & HURTADO ENTERPRISES, LLC (via U.S. Certified Mail); ENCHANT FOODS, INC. (via U.S. Certified Mail); JUSHEN RESTAURANTS, INC. (via U.S. Certified Mail); KAHANI RESTAURANTS, LLC (via U.S. Certified Mail); SAGE RESTAURANTS, LLC (via U.S. Certified Mail)