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County of Santa Clara
20CV373147
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LAW OFFICES OF MARK YABLONOVICH
Mark Yablonovich, Esq., Cal. State Bar No. 186670
Mark@Yablonovichlaw.com
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (310) 286-0246 • Fax: (310) 407-5391

Attorneys for Plaintiff Jose Cuevas

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

20CV373147

JOSE CUEVAS, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

LITTLE CAESAR ENTERPRISES, INC.,
and DOES 1 through 10, inclusive,

Defendants.

Case No.:

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

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff Jose Cuevas (“Plaintiff”), as an aggrieved employee and on behalf of the State
2 of California and all other non-party aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendant Little Caesar Enterprises, Inc. and
8 DOES 1 through 10, inclusive (collectively “Defendants”) in California as non-exempt, hourly-
9 paid employees and against whom one or more violations of any provision in Division 2 Part 2
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
11 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed (“Aggrieved
12 Employees”), as set forth in this complaint, at any time between one year before Plaintiff’s
13 submission of the LWDA Notice (defined below) in advance of Plaintiff’s filing of this
14 complaint (in addition to all days the period was stayed or tolled) until judgment. Plaintiff’s
15 share of civil penalties sought in this action does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
21 avail themselves of the California market so as to render the exercise of jurisdiction over them
22 by the California courts consistent with traditional notions of fair play and substantial justice.
23 There is no basis for federal diversity jurisdiction in this action given that the State of
24 California, the real party in interest, is not a “citizen” for purposes of satisfying diversity
25 jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013) (holding
26 when the real party in interest is a state, it cannot be a “citizen” for purposes of diversity
27 jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in
28 controversy requirement for federal diversity jurisdiction in this action. *Id.* at 1122.

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

5. PAGA authorizes aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff is a resident of Santa Clara County, California. Defendants employed Plaintiff from approximately June 15, 2006 to approximately November 5, 2019, as an hourly-paid Crew Member/Cook at Defendants' restaurant located in San Jose, California. Plaintiff typically worked at least five hours per day, five to six days per week, and twenty-five to thirty hours or more per week. Occasionally, Plaintiff worked eight-hour shifts and more than forty-hour weeks. At the end of his employment with Defendants, Plaintiff earned approximately \$15.25 per hour. His job duties included preparing food, ringing up sales, and cleaning.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant Little Caesar Enterprises, Inc. is a Michigan corporation, authorized to do, and doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, and the various states of the United States of America.

8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, and will seek leave of this Court to amend the complaint and serve such fictitiously named defendants once their names and capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the other named Defendants, and that each and all of the acts and omissions alleged herein were performed by, or is attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity

1 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
2 accordance with, and represent, the official policy of Defendants.

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

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

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 11. Plaintiff is informed and believes that Defendants are corporations engaged in
12 business across California. Upon information and belief, Defendants maintain a centralized
13 Human Resources department for all non-exempt, hourly-paid employees working for
14 Defendants in California, including Plaintiff and other Aggrieved Employees. At all relevant
15 times, Defendants issued and maintained uniform, standardized practices and procedures for all
16 non-exempt, hourly-paid employees in California, including Plaintiff and other Aggrieved
17 Employees, regardless of their location or position.

18 12. Upon information and belief, Defendants process payroll for all non-exempt,
19 hourly-paid employees working for Defendants in California, including Plaintiff and other
20 Aggrieved Employees. Further, Defendants issue the same uniform and formatted wage
21 statements to all non-exempt, hourly-paid employees in California, irrespective of their work
22 location, position, or manner in which each employee's employment ended. Defendants' payroll
23 department processed payroll for non-exempt, hourly-paid employees in the same manner
24 throughout California. In other words, Defendants utilized the same methods and formulas when
25 calculating wages and any other remunerations due to Plaintiff and other Aggrieved Employees
26 in California.

27 13. Defendants continue to employ non-exempt, hourly-paid employees in
28 California.

1 14. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
3 advisors knowledgeable about California labor and wage law, employment and personnel
4 practices, and about the requirements of California law.

5 15. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
6 Aggrieved Employees were not fully compensated because, among other reasons, all hours
7 worked may not have been recorded and because Defendants did not always pay for all hours
8 worked.

9 16. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other Aggrieved Employees were entitled to receive
11 certain wages for overtime compensation and that they were not receiving overtime wages at the
12 correct overtime rate and/or for work that was required to be performed.

13 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at
15 least minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff
16 and other Aggrieved Employees were not paid at least minimum wages for all work performed.

17 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other Aggrieved Employees were entitled to meal periods
19 in accordance with the Labor Code; that Plaintiff and other Aggrieved Employees were entitled
20 to payment of one additional hour of pay at their regular rates of compensation when they were
21 not provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and other
22 Aggrieved Employees were not provided with all meal periods nor payment of one additional
23 hour of pay at their regular rates of compensation when they did not receive a timely,
24 uninterrupted, thirty-minute meal period.

25 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other Aggrieved Employees were entitled to rest periods in
27 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
28 should have known that Plaintiff and other Aggrieved Employees were entitled to payment of

1 one additional hour of pay at their regular rates of compensation when they were not provided
2 with a compliant rest period, and that Plaintiff and other Aggrieved Employees were not
3 provided compliant rest periods nor payment of one additional hour of pay at their regular rates
4 of compensation when they were not provided a compliant rest period.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other Aggrieved Employees were entitled to receive
7 complete and accurate wage statements in accordance with California law. In violation of the
8 California Labor Code, Plaintiff and other Aggrieved Employees were not provided complete
9 and accurate wage statements.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that they had a duty to timely comply with requests from Plaintiff and other
12 Aggrieved Employees to inspect or receive a copy of their employment and personnel records in
13 accordance with the Labor Code, but failed to do so.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete payroll records in
16 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

17 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to maintain accurate and complete time records in
19 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

20 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other Aggrieved Employees were entitled to timely
22 payment of wages during their employment. In violation of the California Labor Code, Plaintiff
23 and other Aggrieved Employees did not receive payment of all wages, including, but not limited
24 to, overtime wages, minimum wages, and meal period and rest period premium wages, within
25 permissible time periods.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other Aggrieved Employees were entitled to timely
28 payment of all wages earned upon termination of employment. In violation of the California

1 Labor Code, Plaintiff and other Aggrieved Employees did not receive payment of all wages due,
2 including, but not limited to, overtime wages, minimum wages, meal period and rest period
3 premium wages, and reporting time pay, within permissible time periods.

4 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other Aggrieved Employees were entitled to
6 reimbursement for all business-related expenditures and/or losses they incurred during the
7 course and scope of their employment, and that they did not receive reimbursement of
8 applicable business-related expenditures and/or losses they incurred.

9 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Defendants had a duty to provide reasonably comfortable work areas
11 for their employees consistent with industry-wide standards, but failed to do so.

12 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other Aggrieved Employees were entitled to suitable
14 seating and/or were entitled to sit when it did not interfere with the performance of their
15 duties, but failed to provide seating.

16 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
18 and other Aggrieved Employees for all hours worked, and that Defendants had the financial
19 ability to pay such compensation, but failed to do so, and falsely represented to Plaintiff and
20 other Aggrieved Employees that they were properly denied wages, all in order to increase
21 Defendants' profits.

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

28 31. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the alleged
2 violations was committed.”

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

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

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated, including the facts and theories to support the alleged violation.
- 13 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
14 2699.3(a) and any employer response to that notice shall be accompanied
15 by a filing fee of seventy-five dollars (\$75).
- 16 (c) The LWDA shall notify the employer and the aggrieved employee or
17 representative by certified mail that it does not intend to investigate the
18 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
19 postmark date of the aggrieved employee’s notice. Upon receipt of the
20 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
21 calendar days of the postmark date of the aggrieved employee’s notice,
22 the aggrieved employee may commence a civil action pursuant to
23 California Labor Code section 2699 to recover civil penalties.

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

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

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

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

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

35. On or about September 1, 2020, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated September 1, 2020, is attached as Exhibit 1.

36. As of the filing of this complaint, 65 days have passed since Plaintiff sent the LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

37. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5,

1 2800 and 2802, as well as all applicable IWC Wage Orders.

2 38. Defendants, at all times relevant to this complaint, were employers or persons
3 acting on behalf of an employer(s) who violated Plaintiff's and other Aggrieved Employees'
4 rights by violating various sections of the California Labor Code as set forth herein.

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

8 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
9 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
10 general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees,
11 and the State of California against Defendants, in addition to other remedies, for violations of
12 California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 558,
13 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802 as well as all applicable
14 IWC Wage Orders.

15 **FIRST CAUSE OF ACTION**

16 **For Civil Penalties Pursuant to California Labor Code sections 2698, *et seq.***

17 **(Against all Defendants)**

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

20 42. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
22 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
23 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Labor Code section 2699.3(c)
24 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
25 those Labor Code sections not found in section 2699.5, including sections 226(c), 1182.12 and
26 1198.5.

27 43. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiff and other
3 Aggrieved Employees with all required overtime pay, as set forth below;
- 4 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and 1197.1,
5 and the applicable IWC Wage Order for Defendant's failure to
6 compensate Plaintiff and other Aggrieved Employees with at least
7 minimum wages for all hours worked, as set forth below;
- 8 (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
10 and other Aggrieved Employees with meal periods, as set forth below;
- 11 (d) Violation of Labor Code sections 226.7 and 1198, and the applicable
12 IWC Wage Order for Defendants' failure to provide Plaintiff and other
13 Aggrieved Employees with rest periods, as set forth below;
- 14 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
15 IWC Wage Order for failure to provide accurate and complete wage
16 statements to Plaintiff and other Aggrieved Employees, as set forth
17 below;
- 18 (f) Violation of Labor Code sections 226(c) and 1198 for failure to provide
19 the right to inspect or receive a copy of employment records upon request
20 within a timely manner, as set forth below;
- 21 (g) Violation of Labor Code sections 1198 and 1198.5 for failure to provide
22 the right to inspect and receive a copy of the personnel records upon
23 request within a timely manner, as set forth below;
- 24 (h) Violations of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain accurate payroll records, as set
26 forth below;
- 27 (i) Violations of Labor Code section 1198 and the applicable IWC Wage
28 Order for failure to maintain accurate time records, as set forth below;

- (j) Violation of Labor Code section 204 for failure to timely pay all wages during employment, as set forth below;
- (k) Violation of Labor Code sections 201, 202, and 203, for failure to timely pay all earned wages upon termination, as set forth below;
- (l) Violation of Labor Code Sections 2800 and 2802 for failure to reimburse necessary expenditures and losses incurred by Plaintiff and other Aggrieved Employees in the performance of their jobs, as set forth below;
- (m) Violation of California Labor Code Section 1198 and the applicable IWC Wage Order for failure to provide reasonably comfortable work areas to Plaintiff and other Aggrieved Employees consistent with industry-wide standards, as set forth below; and
- (n) Violation of California Labor Code Section 1198 and the applicable IWC Wage Order for failure to provide suitable seating to Plaintiff and other Aggrieved Employees, as set forth below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

44. 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.”

45. 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.

46. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other Aggrieved Employees working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half for all hours

1 worked in excess of eight hours in a day or more than forty hours in a workweek.

2 47. The applicable IWC Wage Order further provides that Defendants are and were
3 required to pay Plaintiff and other Aggrieved Employees working more than twelve hours in a
4 day, overtime compensation at a rate of two times their regular rate of pay, and required to pay
5 Plaintiff and other Aggrieved Employees at a rate of two times their regular rate of pay for hours
6 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

7 48. An employee's regular rate of pay includes all remuneration for employment
8 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

14 50. At all relevant times, Defendants failed to pay all overtime wages owed to
15 Plaintiff and other Aggrieved Employees. During the relevant time period, Plaintiff and other
16 Aggrieved Employees were not paid overtime wages for all of the hours they worked in excess
17 of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week,
18 and/or for the seventh consecutive day of work, sometimes because all hours that they worked
19 were not recorded, and other times because they were simply not paid for all hours that were
20 recorded and/or worked.

21 51. Upon information and belief,, Defendants have a company-wide policy and/or
22 practice of staffing their restaurants based on labor budgets set by the corporate office and/or
23 upper management. The labor budgets included maximum number of labor hours to be used
24 based on revenue generated by the restaurant. Defendants' use of labor budgets resulted in
25 chronic understaffing, such that there were too few employees on duty to handle the workload
26 and provide uninterrupted meal periods. As a result of Defendants' systemic utilization of labor
27 budgets and preference for profitability over compliance with labor laws, Plaintiff and other
28 Aggrieved Employees were not provided adequate meal break coverage to allow them to be

1 relieved of their duties for compliant meal breaks and/or were required to perform pre-shift
2 and/or post-shift work while off-the-clock. Thus, Plaintiff and other Aggrieved Employees
3 would have to continue with their duties, such as preparing food and cleaning, after clocking out
4 for meal periods and after the end of their shifts. This would result in Plaintiff and other
5 Aggrieved Employees working while off-the-clock during and/or after their scheduled shifts for
6 fifteen to twenty minutes or longer, on a regular basis. Defendants would not always permit
7 Plaintiff and other Aggrieved Employees to adjust their punch-in or punch-out times so that they
8 could account for and be compensated for this off-the-clock work.

9 52. Additionally, Defendants have a company-wide policy and/or practice of
10 communicating with employees regarding work-related matters as well as directing employees
11 to continue working and/or return to work during the employees' meal periods and when those
12 employees are otherwise clocked out. As a result of this policy and/or practice, Plaintiff and
13 other Aggrieved Employees performed work while off-the-clock. Defendants would not always
14 permit Plaintiff and other Aggrieved Employees to adjust their punch-in or punch-out times so
15 that they could account for and be compensated for this off-the-clock work.

16 53. Defendants also have a company-wide policy and/or practice of requiring their
17 employees to clock out and then wait for a manager or supervisor to release them from the
18 restaurant at the end of closing shifts. As a result of this closing shift policy and/or practice,
19 Plaintiff and other Aggrieved Employees remained under the control of Defendants even though
20 they were off-the-clock. Moreover, Defendants have a company-wide policy and/or practice that
21 requires their employees who work closing shifts to clock out at the end of their scheduled shift.
22 However, sometimes the restaurant would be busy until the restaurant closed, and Plaintiff and
23 other Aggrieved Employees would not be able to perform their closing shift duties until after the
24 end of his scheduled shift. This would result in Plaintiff and other Aggrieved Employees
25 working while off-the-clock.

26 54. Defendants knew or should have known that, as a result of their policies,
27 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing
28 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered

1 or permitted to perform work for which they were not paid. Defendants also knew, or should
2 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-
3 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes
4 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
5 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other
6 times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff
7 and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they
8 actually worked.

9 55. Defendants' failure to pay Plaintiff and other Aggrieved Employees all
10 overtime compensation owed, as required by California law, violates the provisions of
11 California Labor Code sections 510 and 1198. Plaintiff and other Aggrieved Employees are
12 entitled to recover civil penalties, attorneys' fees, costs, and interest, as well as unpaid
13 overtime pursuant to Labor Code sections 558, 1194 and/or 2699(a), (f), and (g)

14 **FAILURE TO PAY MINIMUM WAGES**

15 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1 AND 1198**

16 56. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
17 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
18 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
19 fixed is unlawful. Compensable work time defined in Wage Order No. 5 as "the time during
20 which an employee is subject to the control of an employer, and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs.
22 tit. 8, § 11050(2)(K) (defining "Hours Worked").

23 57. As set forth above, Plaintiff is informed and believes, and thereon alleges, that
24 Defendants' policy and/or practice of staffing their locations based on labor budgets set by the
25 corporate office resulted in chronic understaffing, causing a lack of meal break coverage and
26 leading employees to perform off-the-clock work pre-shift, post-shift and/or during their meal
27 breaks. Moreover, Defendants' policy or practice of communicating with employees regarding
28 work-related matters as well as directing employees to continue working and/or return to work

1 during meal periods and when those employees are otherwise clocked out resulted in employees
2 performing unpaid work. Defendants did not pay minimum wages for these off-the-clock hours
3 that Plaintiff and other Aggrieved Employees worked, including but not limited to before and
4 after shifts as well as during meal periods.

5 58. Additionally, Defendants' closing shift policies and/or practices of requiring their
6 employees wait off-the-clock for the manager or supervisor to eventually release them from the
7 premises as well as requiring their employees to clock out at the end of the scheduled shift
8 regardless of whether they were still working resulted in off-the-clock time in which Plaintiff
9 and other Aggrieved Employees remained subject to the control of Defendants.

10 59. Defendants systematically did not pay Plaintiff and other Aggrieved Employees
11 all hours worked. To the extent that the off-the-clock work and/or recorded hours did not qualify
12 for overtime premium payment, Defendants did not pay at least minimum wages for those hours
13 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,
14 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order. Plaintiff and other
15 Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and
16 interest, pursuant to Labor Code sections 1194, 1197.1 and/or 2699(a), (f), and (g).

17 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

18 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198**

19 60. At all relevant times herein set forth, California Labor Code sections 226.7,
20 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and other
21 Aggrieved Employees' employment by Defendants.

22 61. At all relevant times herein set forth, California Labor Code section 512(a)
23 provides that an employer may not require, cause, or permit an employee to work for a period of
24 more than five hours per day without providing the employee with a meal period of not less than
25 thirty minutes, except that if the total work period per day of the employee is not more than six
26 hours, the meal period may be waived by mutual consent of both the employer and the
27 employee. Under California law, first meal periods must start after no more than five hours.
28 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

1 62. At all relevant times herein set forth, California Labor Code sections 226.7,
2 512(a), and 1198 provide that no employer shall require an employee to work during any meal
3 period mandated by an applicable order of the IWC. The wage order's meal period requirement
4 is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the
5 premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*, 53 Cal. 4th at
6 1036.

7 63. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
8 1198, and the applicable IWC Wage Order also require employers to provide a second meal
9 break of not less than thirty minutes if an employee works over ten hours per day, and if one is
10 not provided, pay an employee one additional hour of pay at the employee's regular rate of
11 compensation, except that if the total hours worked is no more than twelve hours, the second
12 meal period may be waived by mutual consent of the employer and the employee only if the
13 first meal period was not waived.

14 64. As stated above, upon information and belief, at all relevant times Defendants
15 had, and continue to have a company-wide policy and/or practice of understaffing their facilities
16 which resulted in a lack of break coverage and prevented Plaintiff and other Aggrieved
17 Employees from taking all timely, uninterrupted meal periods, including second meal periods, to
18 which they were entitled. As a result of these policies and/or practices, Plaintiff and other
19 Aggrieved Employees continued to perform their assigned duties without being able to take
20 timely, compliant meal periods. Plaintiff and other Aggrieved Employees had to work through
21 part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended
22 periods of time before taking meal periods. Moreover, Defendants' policies and/or practices of
23 communicating with employees regarding work-related matters as well as directing employees
24 to continue working and/or return to work during meal periods resulted in employees not
25 receiving timely, uninterrupted thirty-minute meal periods.

26 65. At all times herein mentioned, Defendants knew or should have known that as a
27 result of these policies and/or practices, Plaintiff and other Aggrieved Employees were
28 prevented from being relieved of all duties and required to perform some of their assigned duties

1 during meal periods and that they did not receive timely meal periods. As a result, Plaintiff and
2 other Aggrieved Employees had to work through all or part of their meal periods, have their
3 meal periods interrupted, and/or wait extended periods of time before taking meal periods.

4 66. At all relevant times herein set forth, Defendants knew or should have known
5 that, as a result of their practices and policies, Plaintiff and other Aggrieved Employees have
6 been required to perform some of their assigned duties during meal periods and that
7 Defendants did not pay Plaintiff and other Aggrieved Employees meal period premium wages
8 when meal periods were late, interrupted, and/or missed. As a result, Plaintiff and other
9 Aggrieved Employees had to work through some or all of their meal periods, had their meal
10 periods interrupted to return to work, and/or waited extended periods of time, over five hours,
11 before taking meal periods

12 67. Moreover, upon information and belief, Defendants engaged in a systematic,
13 company-wide policy and/or practice of not properly training Plaintiff and other Aggrieved
14 Employees on their entitlement to meal period premium payments resulting from meal period
15 violations. As such, Plaintiff was unaware of when meal period premiums were owed to him.
16 Accordingly, Plaintiff and other Aggrieved Employees did not receive all meal period premium
17 wages owed when compliant meal periods were not provided. To the extent that Defendants did
18 pay meal period premium wages to Aggrieved Employees, such payments were admissions of
19 their failure to provide meal periods. Furthermore, based upon information and belief, to the
20 extent employees received non-discretionary remuneration, Defendants' regular rate of
21 compensation for calculating meal period premiums did not include all required remunerations
22 or the correct calculation and resulted in an underpayment of meal period premium wages.

23 68. Accordingly, Defendants failed to provide all meal periods and/or pay all meal
24 period premiums in violation of Labor Code sections 226.7, 512, and 1198 and applicable IWC
25 Wage Order. Plaintiff and other Aggrieved Employees are therefore entitled to penalties,
26 attorneys' fees, costs, and interest, pursuant to Labor Code sections 558 and 2699(a), (f), and
27 (g).

28 **FAILURE TO PROVIDE REST PERIODS IN**

VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198

69. At all relevant times herein set forth, California Labor Code sections 226.7 and 1198, and the applicable IWC Wage Order were applicable to Plaintiff and other Aggrieved Employees' employment by Defendants.

70. At all relevant times, 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 hours.

71. At all relevant times, 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. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to California Labor Code section 226.7(c) and the applicable IWC Wage Order, Plaintiff and other Aggrieved Employees are entitled to recover from Defendants one additional hour of pay at their regular rates of compensation for each workday that a required rest period was not provided.

72. Upon information and belief, during the relevant time period, Defendants' company-wide policy and practice of understaffing their establishments resulted in a lack of break coverage, which prevented Plaintiff and other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

73. Upon information and belief, Defendants also engaged in a systematic, company-wide policy and/or practice of not properly training Plaintiff and other Aggrieved Employees on their entitlement to rest period premium payments resulting from rest period violations. As such,

1 Plaintiff was unaware of when rest period premiums were owed to him. Accordingly, Plaintiff
2 and other Aggrieved Employees did not receive all rest period premium wages owed when
3 compliant rest periods were not provided. To the extent that Defendants did pay rest period
4 premium wages to Aggrieved Employees, such payments were admissions of their failure to
5 provide rest periods.

6 74. Moreover, upon information and belief, Defendants also engaged in a systematic,
7 company-wide practice and/or policy of not paying rest period premiums owed when rest
8 periods are not provided. Additionally, Defendants paid rest period premiums at the incorrect
9 rates. Because Defendants did not properly calculate Plaintiff's and other Aggrieved
10 Employees' regular rates of compensation by including all remunerations, such as
11 nondiscretionary bonuses and incentive pay, any premiums paid for rest period violations were
12 also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.
13 Thus, Defendants denied Plaintiff and other Aggrieved Employees rest periods and failed to pay
14 them rest period premium wages due, in violation of Labor Code section 226.7 and the
15 applicable IWC Wage Order.

16 75. As with meal periods, Defendants' policies and/or practices prevented Plaintiff
17 and other Aggrieved Employees from being relieved of all duties to take compliant rest periods.
18 As a result, Plaintiff and other Aggrieved Employees would frequently work shifts in excess of
19 three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving
20 all uninterrupted ten-minute rest periods to which they were entitled. Plaintiff was not able to
21 take rest periods due to the pressure Defendants placed on him to meet workload demands, as
22 well as a lack of break coverage. Moreover, Defendants' company-wide policy and/or practice
23 of requiring their employees to remain on premises during their rest periods, but not providing
24 suitable resting facilities further prevented Plaintiff and other Aggrieved Employees from being
25 relieved of their duties during rest periods.

26 76. To the extent that Defendants did pay rest period premium wages to Plaintiff and
27 other Aggrieved Employees, such payments are admissions of Defendants' failure to provide
28 rest periods.

1 77. Accordingly, Defendants failed to provide all rest periods and/or pay all rest
2 period premiums in violation of Labor Code sections 226.7, and 1198 and the applicable IWC
3 Wage Order. Plaintiff and other Aggrieved Employees are therefore entitled to penalties,
4 attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN**
6 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

7 78. Labor Code section 226(a) requires employers to make, keep and furnish true,
8 accurate, and complete employment records. Defendants have not provided Plaintiff and other
9 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
10 employee may seek civil penalties under Labor Code section 2699 for violations of wage
11 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
12 15 Cal.App.5th 773, 788 (2017). (“a plaintiff seeking civil penalties under PAGA for a violation
13 of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
14 requirements of section 226(e)(1).”) Rather, Labor Code section 226.3 provides that any
15 employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250
16 per employee per violation in an initial citation and \$1,000 per employee for each violation in a
17 subsequent citation, for which the employer fails to provide the employee a wage statement or
18 fails to keep the required records pursuant to Section 226(a).

19 79. Defendants have provided Plaintiff and other Aggrieved Employees with
20 incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,
21 Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all
22 the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and did not pay
23 all hours recorded, Defendants did not list the correct amount of gross wages earned by Plaintiff
24 and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Defendants
25 failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees
26 in violation of Section 226(a)(5). Defendants also failed to accurately list the total hours worked
27 by Plaintiff and other Aggrieved Employees for work performed while off-the-clock in violation
28 of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked in violation of Section 226(a)(9). Additionally, because
2 Defendants did not calculate other Aggrieved Employees' regular rate of pay correctly for
3 purposes of paying overtime and/or premium wages, it did not list the correct amount of gross
4 wages and net wages earned by other Aggrieved Employees in compliance with Sections
5 226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect
6 during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal
7 and rest premium wages, in violation of Section 226(a)(9). Furthermore, because Defendants
8 failed to pay all meal period and rest period premiums to Plaintiff and other Aggrieved
9 Employees, Defendants did not list the correct amount of gross wages earned by Plaintiff and
10 other Aggrieved Employees in compliance with Section 226(a)(1). For the same reason,
11 Defendants failed to list the correct amount of net wages earned by Plaintiff and other
12 Aggrieved Employees in violation of Section 226(a)(5).

13 80. Plaintiff and other Aggrieved Employees are therefore entitled to recover
14 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN**
17 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(C), 1198.5, AND 1198**

18 81. At all relevant time herein set forth, California Labor Code section 226(b)
19 provides that every employer shall furnish current and former employees the right to inspect
20 or copy records pertaining to their employment, upon reasonable request to the employer.
21 Labor Code Section 226(c) provides that an employer must comply with a request made
22 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
23 employee's request.

24 82. Additionally, Labor Code section 226(c) provides in relevant part:

25 An employer who receives a written or oral request to inspect or receive
26 a copy of records pursuant to subdivision (b) pertaining to a current or
27 former employee shall comply with the request as soon as practicable,
28 but no later than 21 calendar days from the date of the request. A
violation of this subdivision is an infraction.

83. Similarly, Labor Code section 1198.5 requires an employer to timely produce

1 certain employment records upon the request of an employee or their representative.

2 Specifically, Section 1198.5 provides in relevant part:

3 (a) Every current and former employee, or his or her representative,
4 has the right to inspect and receive a copy of the personnel records that
5 the employer maintains relating to the employee's performance or to
6 any grievance concerning the employee...

7 (b)(1) The employer shall make the contents of those personnel
8 records available for inspection to the current or former employee, or
9 his or her representative, at reasonable intervals and at reasonable
10 times, but not later than 30 calendar days from the date the employer
11 receives a written request...

12 (k) If an employer fails to permit a current or former employee, or his
13 or her representative, to inspect or copy personnel records within the
14 times specified in this section, or times agreed to by mutual agreement
15 as provided in this section, the current or former employee or the
16 Labor Commissioner may recover a penalty of seven hundred fifty
17 dollars (\$750) from the employer...

18 84. At all times relevant herein, California Labor Code section 226(f) states "[a]
19 failure by an employer to permit a current or former employee to inspect or copy records
20 within the time set forth in subdivision (c) entitles the current or former employee or the
21 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
22 employer."

23 85. At all times relevant herein, California Labor Code section 226(h) states "[a]n
24 employee may also bring an action for injunctive relief to ensure compliance with this section,
25 and is entitled to an award of costs and reasonable attorney's fees."

26 86. During the relevant time period, Plaintiff sent Defendants reasonable written
27 requests for documents and records relating to his employment with Defendants. During the
28 relevant time period, Defendants failed to produce for inspection and copying or otherwise
permit inspection and copying of documents and records relating to Plaintiff's employment.

87. For example, on or about January 27, 2020, Plaintiff's counsel sent a written
request to Defendants via certified mail with an authorization for release of Plaintiff's
personnel file and wage records. On or about June 16, 2020, Plaintiff's counsel sent a second

1 written request to Defendants via certified mail with an authorization for release of Plaintiff's
2 personnel file and wage records. To date, Defendants have failed to produce Plaintiff's
3 personnel file and wage records.

4 88. Thus, over 30 days have passed from the date that Plaintiff sent Defendants
5 reasonable written requests for documents and records relating to his employment and
6 Defendants have failed to comply with the requests in violation of Labor Code sections 226(c)
7 and 1198.5.

8 89. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code
10 sections 226(h) and 2699(a), (f), and (g).

11 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
12 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND**
13 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

14 90. At all times relevant herein set forth, Labor Code section 1174(d) provides that
15 "[e]very person employing labor in this state shall ... [k]eep a record showing the names and
16 addresses of all employees employed and the ages of all minors" and "[k]eep, at a central
17 location in the state or at the plants or establishments at which employees are employed, payroll
18 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
19 units earned by and any applicable piece rate paid to, employees employed at the respective
20 plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a
21 \$500 civil penalty if they fail to maintain accurate and complete records as required by Section
22 1174(d).

23 91. During the relevant time period, and in violation of Labor Code section 1174(d),
24 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
25 Employees showing the daily hours they worked and the wages paid as a result of failing to
26 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
27 by them.

28 92. Defendants' conduct violates California Labor Code sections 1174(d) and 1198

1 and the applicable IWC Wage Order. Plaintiff and other Aggrieved Employees are therefore
2 entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code
3 sections 1174.5 and 2699(a), (f), and (g).

4 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
5 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
6 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 7**

7 93. At all times relevant herein set forth, California Labor Code section 1198
8 provides that the maximum hours of work and the standard conditions of labor shall be those
9 fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
10 1198 further provides that "[t]he employment of any employees for longer hours than those
11 fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to
12 the applicable IWC Wage Order, employers are required to keep accurate time records showing
13 when the employee begins and ends each work period and meal period. Cal. Code Regs. Tit. 8,
14 § 11050(7)(A).

15 94. During the relevant time period, Defendants failed, on a company-wide basis, to
16 keep accurate records of shift and meal period start and stop times for Plaintiff and other
17 Aggrieved Employees, in violation of Section 1198 and the applicable IWC Wage Order.

18 95. Plaintiff and other Aggrieved Employees are therefore entitled to recover
19 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO PAY WAGES DURING EMPLOYMENT IN**
22 **VIOLATION OF LABOR CODE SECTION 204**

23 96. At all times relevant herein set forth, California Labor Code section 204 provides
24 that all wages earned by any person in any employment between the first and the fifteenth days,
25 inclusive, of any calendar month, other than those wages due upon termination of an employee,
26 are due and payable between the sixteenth and the twenty-sixth day of the month during which
27 the labor was performed.

28 97. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth and the last day, inclusive, of
2 any calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the first and the tenth day of the following month.

4 98. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned for labor in excess of the normal work period shall be paid no later than the payday for
6 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
7 204 provides that the requirements of this section are deemed satisfied by the payment of wages
8 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
9 calendar days following the close of the payroll period.

10 99. At all relevant times herein, Defendants failed to pay Plaintiff and other
11 Aggrieved Employees all wages due to them, including, but not limited to, overtime wages,
12 minimum wages, and/or meal and rest period premium wages, within any time period specified
13 by Labor Code section 204.

14 100. Plaintiff and other Aggrieved Employees are entitled to recover penalties,
15 attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and
16 (g).

17 **FAILURE TO PAY WAGES UPON TERMINATION IN**
18 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201 AND 202**

19 101. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
20 that if an employer discharges an employee, the wages earned and unpaid at the time of
21 discharge are due and payable immediately, and that if an employee voluntarily leaves his or her
22 employment, his or her wages shall become due and payable not later than seventy-two hours
23 thereafter, unless the employee has given seventy-two hours previous notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the time of
25 quitting.

26 102. During the relevant time period, on information and belief, Defendants failed to
27 pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants all
28 their earned wages at the time of discharge or within seventy-two hours of their leaving

Defendants' employ, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages in violation of California Labor Code sections 201 and 202.

103. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 2800 AND 2802**

104. At all times relevant, Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code sections 2800 and 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."

105. During the relevant time period, Defendants, on an organization-wide basis, required that Plaintiff and other Aggrieved Employees use their own cell phones to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cell phone expenses. For example, Plaintiff was sometimes required to use his personal cellular phone to carry out his duties. Although Defendants routinely required Plaintiff and other Aggrieved Employees to utilize their personal cellular phones to carry out work-related responsibilities, Defendants failed to reimburse their employees for this cost.

106. Defendants also, on an organizational-wide basis, forced Plaintiff and other Aggrieved Employees to regularly drive their personal vehicles for work. Specifically, Plaintiff would be required to drive her own vehicle to meet with clients and bring them to appointments. Plaintiff and other Aggrieved Employees were not offered full reimbursement,

1 given paperwork for reimbursement, or actually reimbursed for mileage or gas when they used
2 their personal vehicles. Although Defendants may have had a reimbursement policy in place,
3 Defendants did not fully reimburse Plaintiff for the expense reports that he submitted to his
4 supervisors.

5 107. Defendants could have provided Plaintiff and other Aggrieved Employees with
6 work phones, provided vehicles, or reimbursed employees for these expenses, but instead,
7 Defendants passed these operating costs off onto Plaintiff and other Aggrieved Employees.
8 Defendants' policy and/or practice of passing its operating costs on to Plaintiff and other
9 Aggrieved Employees by requiring that they use their own personal cell phones and vehicles for
10 work is in violation of California Labor Code sections 2800 and 2802. Defendants have
11 intentionally and willfully failed to fully reimburse Plaintiff and other Aggrieved Employees for
12 necessary business-related expenses and costs.

13 108. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
14 penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a),
15 (f), and (g).

16 **FAILURE TO PROVIDE REASONABLE WORKING CONDITIONS**
17 **(EXCESSIVE HEAT) IN VIOLATION OF CALIFORNIA LABOR CODE**
18 **SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS,**
19 **TITLE 8, SECTION 11050 SUBDIVISION 9**

20 109. Labor Code section 1198 provides that no employer may employ an employee
21 under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code
22 section 1198 further requires that "... the standard conditions of labor fixed by the commission
23 shall be the ... standard conditions of labor for employees. The employment of any employee ...
24 under conditions of labor prohibited by the order is unlawful."

25 110. Wage Order No. 5 provide that:

26
27 (A) The temperature maintained in each work area shall provide
28 reasonable comfort consistent with industry-wide standards for the
nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

Cal. Code Regs. tit. 8 § 11050, subd. 15.

111. During the relevant time period, Plaintiff and other Aggrieved Employees worked in Defendants' restaurants preparing and cooking food for customers. Oftentimes, the restaurant would reach temperatures as high as 100 degrees due to the heat of the oven and the restaurant's air conditioning system not functioning properly. When Plaintiff complained to his supervisors about the broken air conditioner and excessive heat, he was simply told to open the door, which did little to address the condition.

112. Defendants' policies, practices, and/or procedures of failing to provide Plaintiff and other Aggrieved Employees with working conditions that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed are in violation of California Labor Code section 1198 and the applicable IWC Wage Order.

113. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PROVIDE SEATING IN VIOLATION OF CALIFORNIA LABOR CODE
SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS,
TITLE 8, SECTION 11050 SUBDIVISION 14**

114. California Labor Code section 1198 provides 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."

115. California Code of Regulations, Title 8, section 11050(14) provides:\

All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When 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.

116. Although some Aggrieved Employees were able to perform tasks such as cashiering or food prep that reasonably permit the use of seats, Defendants refuse to provide seats in violation of California Labor Code section 1198 and the applicable Wage Order.

117. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14) because Plaintiff and other Aggrieved Employees were not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it would not interfere with the performance of their duties, nor were they provided with suitable seats. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees and costs in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage statements); 226(c), 1198.5 and 1198 (by failing to provide employment records upon request); 1174(d), 1198 and California Code of Regulations,

1 Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198
2 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate
3 and complete time records); 204 (by failing timely to pay all earned wages during employment);
4 201 and 202 (by failing timely to pay all earned wages upon termination); 2800 and 2802 (by
5 failing to reimburse necessary business related expenses), 1198 and California Code of
6 Regulations, Title 8, Section 11050 subdivision 9 (by failing to maintain reasonable working
7 conditions (excessive heat); and 1198 and California Code of Regulations, Title 8, Section
8 11050 subdivision 14 (by failing to provide suitable seating);

9 3. For civil penalties pursuant to California Labor Code sections 226.3, 558,
10 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
11 sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194,
12 1197, 1197.1, 1198, 1198.5, 2800, and 2802 as well as all applicable IWC Wage Orders;

13 4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a),
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d),
16 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, and 2802.

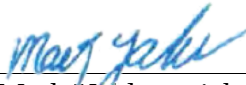
17 5. For pre-judgment and post-judgment interest as provided by law; and

18 6. For such other and further relief as the Court may deem equitable and
19 appropriate.
20

21 Dated: November 5, 2020

Respectfully submitted,

22 LAW OFFICES OF MARK YABLONOVICH
23

24 By: 
25 Mark Yablonoich

26 Attorneys for Plaintiff Jose Cuevas
27
28

EXHIBIT 1

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511
TELEPHONE: (310) 286-0246
FACSIMILE: (310) 407-5391

September 1, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jose Cuevas v. Little Caesar Enterprises, Inc.*

Dear PAGA Administrator:

This law firm represents Jose Cuevas in connection with his claims under the California Labor Code against his former employer Little Caesar Enterprises, Inc. ("Little Caesar").

The employer may be contacted directly:

LITTLE CAESAR ENTERPRISES, INC.
2211 WOODWARD AVENUE
DETROIT, MI 48201-3467

Mr. Cuevas intends to seek civil penalties, attorneys' fees, costs, and all other available relief for Little Caesar's 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. Cuevas seeks relief on behalf of himself, the State of California, and other persons who are or were employed by Little Caesar in California as non-exempt, hourly-paid employees and who received or should have 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.

Little Caesar employed Mr. Cuevas from approximately June 15, 2006 to approximately November 5, 2019, as an hourly-paid Crew Member/Cook at Little Caesar's restaurant located in San Jose, California. Mr. Cuevas typically worked approximately five hours per day, five to six days per week, and twenty-five to thirty hours or more per week. Occasionally, Mr. Cuevas worked eight-hour shifts and more than forty-hour weeks. At the end of his employment with Little Caesar, Mr. Cuevas earned approximately \$15.25 per hour. His job duties included preparing food, ringing up sales, and cleaning.

Little Caesar committed one or more of the following Labor Code violations against Mr. Cuevas and/or the Aggrieved Employees, the facts and theories of which follow, making him an

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“aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Little Caesar’s Company-Wide and Uniform Payroll and Human Resources Practices

Little Caesar is a Michigan corporation that owns and operates numerous restaurants nationwide, including in California. Upon information and belief, Little Caesar maintains a centralized Human Resources department in Michigan for all non-exempt, hourly-paid employees working for Little Caesar, including Mr. Cuevas and other Aggrieved Employees. At all relevant times, Little Caesar issued and maintained uniform, standardized policies, practices, and procedures for all non-exempt, hourly-paid employees in California, including Mr. Cuevas and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, Little Caesar issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. Little Caesar’s payroll department processed payroll for non-exempt, hourly-paid employees in the same manner throughout California. In other words, Little Caesar utilized the same methods and formulas when calculating wages and any other remunerations owed to Mr. Cuevas and other Aggrieved Employees in California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”), require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. Wage Order No. 5 further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two 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 non-discretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Cuevas’s experience and counsel’s review of those records currently available relating to Mr. Cuevas’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations. Thus, Mr. Cuevas 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.

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Little Caesar failed to pay all overtime wages owed to Mr. Cuevas and other Aggrieved Employees. During the relevant time period, Mr. Cuevas and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work, sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. As a result, Mr. Cuevas believes the hours he and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Mr. Cuevas and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

On information and belief, Little Caesar has a company-wide policy and/or practice of staffing its restaurants based on labor budgets set by the corporate office and/or upper management. The labor budgets included maximum number of labor hours to be used based on revenue generated by the restaurant. Little Caesar's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal periods. As a result of Little Caesar's systemic utilization of labor budgets and preference for profitability over compliance with labor laws, Mr. Cuevas and other Aggrieved Employees were not provided adequate meal break coverage to allow them to be relieved of their duties for compliant meal breaks and/or were required to perform pre-shift and/or post-shift work while off-the-clock. Thus, Mr. Cuevas and other Aggrieved Employees would have to continue with their duties, such as preparing food and cleaning, after clocking out for meal periods and after the end of their shifts. This would result in Mr. Cuevas and other Aggrieved Employees working while off-the-clock during and/or after their scheduled shifts for fifteen to twenty minutes or longer, on a regular basis. Little Caesar would not always permit Mr. Cuevas and other Aggrieved Employees to adjust their punch-in or punch-out times so that they could account for and be compensated for this off-the-clock work.

Additionally, Little Caesar has a company-wide policy and/or practice of communicating with employees regarding work-related matters as well as directing employees to continue working and/or return to work during the employees' meal periods and when those employees are otherwise clocked out. As a result of this policy and/or practice, Mr. Cuevas and other Aggrieved Employees performed work while off-the-clock. Little Caesar would not always permit Mr. Cuevas and other Aggrieved Employees to adjust their punch-in or punch-out times so that they could account for and be compensated for this off-the-clock work.

Little Caesar also has a company-wide policy and/or practice of requiring its employees to clock out and then wait for a manager or supervisor to release them from the restaurant at the end of closing shifts. As a result of this closing shift policy and/or practice, Mr. Cuevas and other Aggrieved Employees remained under the control of Little Caesar even though they were off-the-clock. Moreover, Little Caesar has a company-wide policy and/or practice that requires its employees who work closing shifts to clock out at the end of their scheduled shift. However, sometimes the restaurant would be busy until the restaurant closed, and Mr. Cuevas and other

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Aggrieved Employees would not be able to perform their closing shift duties until after the end of his scheduled shift. This would result in Mr. Cuevas and other Aggrieved Employees working while off-the-clock.

Little Caesar knew or should have known that, as a result of its policies, practices and/or procedures, Mr. Cuevas and other Aggrieved Employees were at times performing their assigned duties off-the-clock, were subject to control of Little Caesar, and/or were suffered or permitted to perform work for which they were not paid. Little Caesar also knew, or should have known, that it did not compensate Mr. Cuevas and other Aggrieved Employees for off-the-clock work or all hours worked. Because Mr. Cuevas and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other times, Little Caesar simply did not pay for all the hours that were recorded. Therefore, Mr. Cuevas and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Little Caesar's failure to pay Mr. Cuevas and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and Wage Order No. 5.

Furthermore, based upon information and belief, Little Caesar's regular rate of pay for calculating overtime wages did not include all required remunerations, including non-discretionary bonuses and incentive pay, or the correct calculation. Therefore, during times when some Aggrieved Employees worked overtime and received non-discretionary bonuses and/or incentive pay, Little Caesar failed to pay all overtime wages by paying a lower overtime rate than required by California law.

Based on the foregoing, Mr. Cuevas and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4

California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by 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, subd. 2(K) (defining "Hours Worked").

As set forth above, on information and belief, Little Caesar's policy and/or practice of staffing their locations based on labor budgets set by the corporate office resulted in chronic understaffing, causing a lack of meal break coverage and leading employees to perform off-the-

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clock work pre-shift, post-shift and/or during their meal breaks. Moreover, Little Caesar's policy or practice of communicating with employees regarding work-related matters as well as directing employees to continue working and/or return to work during meal periods and when those employees are otherwise clocked out resulted in employees performing unpaid work. Little Caesar did not pay minimum wages for these off-the-clock hours that Mr. Cuevas and other Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods.

Additionally, Little Caesar's closing shift policies and/or practices of requiring its employees wait off-the-clock for the manager or supervisor to eventually release them from the premises as well as requiring its employees clock out at the end of the scheduled shift regardless of whether they were still working resulted in off-the-clock time in which Mr. Cuevas and other Aggrieved Employees remained subject to the control of Little Caesar.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Little Caesar did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Mr. Cuevas and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11050 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and Wage Order No. 5 require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and Wage Order No. 5, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) and the applicable Wage Order also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve 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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, No. 2:09-cv-09554, 2011 U.S. Dist. LEXIS 156685, at *11-*12 (C.D. Cal. Jan. 11, 2011).

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Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable Wage Order. Wage Order No. 5 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. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and Wage Order No. 5, 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).

On information and belief, Little Caesar has a company-wide policy or practice of understaffing its facilities which resulted in a lack of break coverage and prevented Mr. Cuevas and other Aggrieved Employees from taking all timely, uninterrupted meal periods, including second meal periods, to which they were entitled. As a result of these policies and/or practices, Mr. Cuevas and other Aggrieved Employees continued to perform their assigned duties without being able to take timely, compliant meal periods. Mr. Cuevas 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. Moreover, Little Caesar’s policies and/or practices of communicating with employees regarding work-related matters as well as directing employees to continue working and/or return to work during meal periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

Little Caesar knew or should have known that as a result of these policies and/or practices, Mr. Cuevas and other Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods and that they did not receive timely meal periods. As a result, Mr. Cuevas and other Aggrieved Employees had to work through all or part of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

As with meal periods, Little Caesar’s policies and/or practices prevented Mr. Cuevas and other Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a result, Mr. Cuevas and other Aggrieved Employees would frequently work shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all uninterrupted ten-minute rest periods to which they were entitled. Mr. Cuevas was not able to take rest periods due to the pressure Little Caesar placed on him to meet workload demands, as well as a lack of break coverage. Moreover, Little Caesar’s company-wide policy and/or practice of requiring its employees remain on premises during their rest periods, but not providing suitable resting facilities further prevented Ms. Cuevas and other Aggrieved Employees from being relieved of their duties during rest periods.

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Little Caesar also engaged in a systematic, company-wide policy and/or practice of not properly training Mr. Cuevas and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. As such, Mr. Cuevas was unaware of when meal period and/or rest period premiums were owed to him. Accordingly, Mr. Cuevas and other Aggrieved Employees did not receive all meal period and/or rest period premium wages owed when compliant meal periods and rest periods were not provided. To the extent that Little Caesar did pay meal period and/or rest period premium wages to Aggrieved Employees, such payments were admissions of its failure to provide meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees received non-discretionary remuneration, Little Caesar's regular rate of compensation for calculating meal period and/or rest period premiums did not include all required remunerations or the correct calculation and resulted in an underpayment of meal period and/or rest period premium wages.

Accordingly, Little Caesar failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No. 5. Mr. Cuevas and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 558 and 2699(a), (f), and (g).

Violation of California Labor Code Sections 226(a) and (c) and 1198.5

Labor Code section 226(a) requires employers to make, keep and furnish true, accurate, and complete employment records. Little Caesar has not provided Mr. Cuevas and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017). ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1).") Rather, 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).

Little Caesar has provided Mr. Cuevas and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Little Caesar violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Little Caesar did not record all the hours Mr. Cuevas and other Aggrieved Employees worked while off-the-clock and did not pay all hours recorded, Little Caesar did not list the correct amount of gross wages earned by Mr. Cuevas and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Little Caesar failed to list the correct amount of net wages earned by Mr. Cuevas and other Aggrieved

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Employees in violation of Section 226(a)(5). Little Caesar also failed to accurately list the total hours worked by Mr. Cuevas and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9). Additionally, because Little Caesar did not calculate other Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime and/or premium wages, it did not list the correct amount of gross wages and net wages earned by other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Little Caesar 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). Furthermore, because Little Caesar failed to pay all meal period and rest period premiums to Mr. Cuevas and other Aggrieved Employees, Little Caesar did not list the correct amount of gross wages earned by Mr. Cuevas and other Aggrieved Employees in compliance with Section 226(a)(1). For the same reason, Little Caesar failed to list the correct amount of net wages earned by Mr. Cuevas and other Aggrieved Employees in violation of Section 226(a)(5).

Additionally, Labor Code section 226(c) provides in relevant part:

An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

Similarly, Labor Code section 1198.5 requires an employer to timely produce certain employment records upon the request of an employee or their representative. Specifically, Section 1198.5 provides in relevant part:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee...

(b)(1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor

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Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer...

On January 27, 2020, Mr. Cuevas submitted a written request to Little Caesar for the production of his employment records pursuant to Sections 226(c) and 1198.5. However, Little Caesar has not complied with this request.²

Mr. Cuevas and other Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3, 1198.5, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11050 Subdivision 7

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 “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by Section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Little Caesar willfully failed to maintain accurate payroll records for Mr. Cuevas and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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 Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, Little Caesar failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Mr. Cuevas and other Aggrieved Employees, in violation of Section 1198 and Wage Order No. 5.

Because Little Caesar failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in effect during the

² On June 16, 2020, a second request was made to Little Caesar and no response from the employer has been received.

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pay period and the corresponding number of hours worked on wage statements, Mr. Cuevas 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 and were given confusing and/or incomplete information about their employer. Instead, Mr. Cuevas 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. Cuevas and other Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 204

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. 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, 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 calendar days following the close of the payroll period.

During the relevant time period, Little Caesar failed to pay Mr. Cuevas and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by Labor Code section 204.

Mr. Cuevas and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 201, 202, and 203

Labor Code sections 201-203³ 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours

³ Mr. Cuevas also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

Little Caesar willfully failed to pay Mr. Cuevas and other Aggrieved Employees who are no longer employed by Little Caesar all their earned wages at the time of discharge, or within seventy-two hours of their leaving Little Caesar's employ in violation of California Labor Code sections 201-203. For example, Mr. Cuevas was untimely paid his final wages after being terminated.

Furthermore, Little Caesar did not pay Mr. Cuevas and other Aggrieved Employees who are no longer employed by Little Caesar all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Little Caesar's employ including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

As a result of Little Caesar's violations of Labor Code sections 201-203, Mr. Cuevas and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 201-203, 256, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 2800 and 2802 and California Code of Regulations Title 8, Section 11050 Subdivision 9

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their 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 Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 5 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." Cal. Code Regs. tit. 8 § 11050, subd. 9(B).

During the relevant time period, Mr. Cuevas incurred necessary business-related expenses and costs that were not fully reimbursed by Little Caesar, including but not limited to mileage for supply runs and trips to the bank and other related travel expenses. Although Little Caesar may have had a reimbursement policy in place, Little Caesar did not fully reimburse Mr. Cuevas for the expense reports that he submitted to his supervisors. Additionally, Little Caesar, on a company-wide basis, required that Mr. Cuevas and other Aggrieved Employees utilize their own personal cell phones to carry out their job duties, but Little Caesar failed to reimburse them for the costs of their cell phone plans and data charges. For example, Mr. Cuevas was sometimes required to use his personal cellular phone to carry out his duties. Although Little Caesar required Mr. Cuevas and other Aggrieved Employees to routinely utilize their personal cellular phones to carry out work-related responsibilities, Little Caesar failed to reimburse its employees

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for this cost. Little Caesar could have provided Mr. Cuevas and other Aggrieved Employees with the actual tools and materials required for use on the job, including company cell phones or walkie talkies, but instead, Little Caesar passed this operating cost off onto Mr. Cuevas and other Aggrieved Employees.

Little Caesar's policy, practice, and/or procedure of passing its operating costs on to Mr. Cuevas and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Mr. Cuevas and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 9

Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. 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."

Wage Order No. 5 provide that:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

Cal. Code Regs. tit. 8 § 11050, subd. 15.

During the relevant time period, Mr. Cuevas and other Aggrieved Employees worked in Little Caesar's restaurants preparing and cooking food for customers. Oftentimes, the restaurant would reach temperatures as high as 100 degrees due to the heat of the oven and the restaurant's air conditioning system not functioning properly. When Mr. Cuevas complained to his supervisors about the broken air conditioner and excessive heat, he was simply told to open the door, which did little to address the condition.

Little Caesar's policies, practices, and/or procedures of failing to provide Mr. Cuevas and other Aggrieved Employees with working conditions that provide reasonable comfort consistent with

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industry-wide standards for the nature of the process and the work performed are in violation of California Labor Code section 1198 and the applicable California Code of Regulations. Mr. Cuevas and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code section 1198 and California Code of Regulations Title 8, section 11050 subdivision 14

California Labor Code section 1198 provides 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(14) provides further that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When 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.”

Although some Aggrieved Employees were able to perform tasks such as cashiering or food prep that reasonably permit the use of seats, Little Caesar refuses to provide seats in violation of the applicable wage order and California Labor Code section 1198. Little Caesar's failure to provide seats to its Aggrieved Employees such as cashiers is in violation of the applicable wage order and California Labor Code section 1198. Mr. Cuevas and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code Section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”⁴ Labor Code section

⁴ Mr. Cuevas does not seek to recover any unpaid wages that are provided for in Section 558(a). He only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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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.” Little Caesar, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Cuevas’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth herein.

* * *

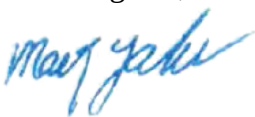
Accordingly, Mr. Cuevas seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Cuevas, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other Aggrieved Employees, and the State of California against Little Caesar for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800 and 2802 and Wage Order No. 5.

Therefore, on behalf of all aggrieved employees, Mr. Cuevas seeks all applicable penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

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

Mark Yablonovich
LAW OFFICES OF MARK YABLONOVICH
9595 Wilshire Boulevard, Suite 900
Beverly Hills, California 90212
(310) 286-0246

Best Regards,



Mark Yablonovich

Copy to: Little Caesar Enterprises, Inc. (via U.S. Certified Mail)