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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 08 2021

BY Anthony Martinez
ANTHONY MARTINEZ, DEPUTY

7 Attorneys for Plaintiff SCOTT AUSTIN on behalf of himself and
8 other current and former aggrieved California-based general managers
and/or assistant managers who were misclassified as exempt

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 SCOTT AUSTIN, on behalf of himself and
13 other current and former aggrieved California-
based general managers and/or assistant
managers who were misclassified as exempt,

14 Plaintiff,

15 vs.

16 BRINKER INTERNATIONAL PAYROLL
17 COMPANY, L.P.; BRINKER RESTAURANT
CORPORATION; and DOES 1 to 100,
18 inclusive,

19 Defendants.

Case No.: **CIV SB 2104988**

PAGA ACTION

**PLAINTIFF SCOTT AUSTIN'S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:**

1. **CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

20 **COME NOW** Plaintiff SCOTT AUSTIN ("Plaintiff"), who alleges and complains against
21 Defendants BRINKER INTERNATIONAL PAYROLL COMPANY, L.P.; BRINKER
22 RESTAURANT CORPORATION and DOES 1 to 100, inclusive (collectively "Defendants") as
23 follows:

24 **I. INTRODUCTION**

25 1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
26 ("PAGA"). representative action brought by Plaintiff on behalf of the State of California, himself
27 and other current and former aggrieved California-based general managers and/or assistant
28 managers who were misclassified as exempt, who worked for Defendants during the relevant time

1 period seeking civil penalties associated with Defendants' violation of the Labor Code based on
2 Defendant's failure to pay at the overtime rate of pay for all overtime hours work, failure to
3 authorize or permit all legally required and compliant meal periods and/or paid proper meal period
4 premiums; failure to authorize or permit all legally required and complaint rest periods and/or paid
5 proper rest period premiums; failure to timely pay earned wages during their employment, failure
6 to provide complete and accurate wage statements, and failure to timely pay final pay upon
7 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
8 and Workforce Development Agency, civil penalties, reasonable attorney's fees pursuant to Labor
9 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
10 others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over Plaintiff and current and former aggrieved
13 California-based general managers and/or assistant managers who were misclassified as exempt
14 because Plaintiff's lawsuit seeks damages in excess of \$25,000 and Defendants employed Plaintiff
15 and current and former aggrieved California-based general managers and/or assistant managers
16 who were misclassified as exempt and the injuries occurred in locations in California including
17 but not limited to San Bernardino County at 10020 Alabama Street, Redlands, California 92374.

18 **III. PARTIES**

19 3. Plaintiff brings this action as a representative of the Labor and Workforce
20 Development Agency on behalf of himself and other current and former aggrieved California-
21 based general managers and/or assistant managers who were misclassified as exempt subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who worked, work, or will
24 work for Defendants as general managers and/or assistant managers who were misclassified as
25 exempt in California. At all times mentioned herein, the currently named Plaintiff is and was
26 domiciled and a resident and citizen of California, was employed by Defendants and misclassified
27 as exempt at Defendants' location in San Bernardino from approximately in or around 2016 until
28 in or around late March 2020 when Defendants' properly reclassified Plaintiff as non-exempt.

1 4. Plaintiff is informed and believes and thereon alleges that Defendant BRINKER
2 INTERNATIONAL PAYROLL COMPANY, L.P. is authorized to do business within the State of
3 California and is doing business in the State of California and/or that Defendants DOES 1-25 are,
4 and at all times relevant hereto were persons acting on behalf of Defendant BRINKER
5 INTERNATIONAL PAYROLL COMPANY, L.P. in the establishment of, or ratification of, the
6 aforementioned illegal wage and hour practices or policies. Defendant BRINKER
7 INTERNATIONAL PAYROLL COMPANY, L.P. operates in San Bernardino County and
8 employed Plaintiff and current and former aggrieved California-based general managers and/or
9 assistant managers who were misclassified as exempt in San Bernardino County, including but not
10 limited to, at 10020 Alabama Street, Redlands, California 92374

11 5. Plaintiff is informed and believes and thereon alleges that Defendant BRINKER
12 RESTAURANT CORPORATION is authorized to do business within the State of California and
13 is doing business in the State of California and/or that Defendants DOES 26-50 are, and at all
14 times relevant hereto were persons acting on behalf of Defendant BRINKER RESTAURANT
15 CORPORATION in the establishment of, or ratification of, the aforementioned illegal wage and
16 hour practices or policies. Defendant BRINKER RESTAURANT CORPORATION operates in
17 San Bernardino County and employed Plaintiff and current and former aggrieved California-based
18 general managers and/or assistant managers who were misclassified as exempt in San Bernardino
19 County, including but not limited to, at 10020 Alabama Street, Redlands, California 92374

20 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
21 through 50 are corporations or are other business entities or organizations of a nature unknown to
22 Plaintiff that employed Plaintiff and current and former aggrieved California-based general
23 managers and/or assistant managers who were misclassified as exempt in, permitted Plaintiff and
24 current and former aggrieved California-based general managers and/or assistant managers who
25 were misclassified as exempt to work, and exercised control over the wages, hours and working
26 conditions of employment of Plaintiff and current and former aggrieved California-based general
27 managers and/or assistant managers who were misclassified as exempt.

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7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(Against all Defendants)

10. Plaintiff hereby incorporate by reference paragraphs 1-9 above, as if fully set forth below.

11. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1198 and the IWC Wage Orders. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Defendants misclassified Plaintiff and aggrieved California non-exempt hourly general managers and/or assistant managers as exempt employees:** Defendants employed and classified general managers as non-exempt hourly general managers in California, from in or

1 around the period beginning one-year period preceding the sending of the initial notice to the
2 LWDA to the present. Defendants employed and classified Plaintiff and current and former
3 assistant managers as non-exempt hourly assistant managers in California from in or around the
4 period beginning one-year period preceding the sending of the initial notice to the LWDA to on or
5 about March 2020 when Defendants properly re-classified them as non-exempt employees.

6 13. Throughout the relevant time period, Defendants classified current and former
7 aggrieved California non-exempt hourly general managers and/or assistant managers as managers
8 solely for the purposes of avoiding the requirements of the California Labor Code as it pertains to
9 the payment of working conditions of hourly employees.

10 14. Plaintiff and current and former aggrieved California non-exempt hourly general
11 managers and/or assistant managers did/do not primarily engage in duties which involve
12 customarily or regularly exercising discretion and independent judgment, and/or perform work
13 under general supervision, and/or retained the ability to hire or fire other employees, and/or make
14 suggestions and recommendations as to the hiring or firing of other employees.

15 15. Instead, Plaintiff and current and former aggrieved California non-exempt hourly
16 general managers and/or assistant managers spent/spend most of their shift filling in for non-
17 exempt employees and/or performing non-exempt duties, including but not limited to, cooking,
18 washing dishes, answering phones, and/or expediting food orders. Nevertheless, Defendants
19 misclassify Plaintiff and current and former aggrieved California non-exempt hourly general
20 managers and/or assistant managers as exempt employees.

21 16. On information and belief, Defendants continue misclassifying their general
22 managers as exempt and paying their general managers with salaries rather than on an hourly
23 basis, despite Defendants continue to require their general managers to spend most of their shift
24 filling in for non-exempt employees and/or performing non-exempt duties.

25 17. In apparent recognition that Defendants had misclassified their assistant managers,
26 they reclassified their assistant managers as non-exempt in or around March 2020. At that point in
27 time, Defendants stopped paying their assistant managers with salaries and instead paid them on
28 an hourly basis, paying overtime wages, and providing required meal and rest periods, beginning

1 in or around March 2020.

2 18. As a result of Defendants misclassifying their general managers as exempt
3 employees in the one (1) year prior to this letter through the present, Plaintiff alleges, on
4 information and belief, that current and former aggrieved California-based general managers were
5 not paid with compensation at the overtime rate of pay for all the overtime hours that they worked;
6 were not authorized or permitted to take all legally required and compliant meal periods and/or
7 paid proper meal period premiums; were not authorized or permitted to take all legally required
8 and compliant rest periods and/or paid proper rest period premiums; were not timely paid their
9 earned wages during their employment; were not provided with complete and accurate wage
10 statements; and were not timely paid their final pay upon separation of employment.

11 19. As a result of Defendants misclassifying Plaintiff and aggrieved California non-
12 exempt hourly assistant managers as exempt employees in the one (1) year prior to this letter up
13 until in or around March 2020 when Defendants properly reclassified them as non-exempt
14 employees, Plaintiff alleges that he and aggrieved California non-exempt hourly assistant
15 managers were not paid with compensation at the overtime rate of pay for all the overtime hours
16 that they worked; were not authorized or permitted to take all legally required and compliant meal
17 periods and/or paid proper meal period premiums; were not authorized or permitted to take all
18 legally required and compliant rest periods and/or paid proper rest period premiums; were not
19 timely paid their earned wages during their employment; were not provided with complete and
20 accurate wage statements; and were not timely paid their final pay upon separation of
21 employment.

22 20. **Failure to pay overtime wages if applicable, for all hours worked to non-**
23 **exempt employees:** In California, an employer is required to pay an employee for all “hours
24 worked” which includes all time that an employee is under control of the employer and including
25 all time that the employee is suffered and permitted to work whether or not the employee is
26 required to work. This includes time an employee is required to be present at a certain location
27 whether or not the employee is working, including meal times. *Mendiola v. CPS Security*
28 *Solutions, Inc.* (2015) 60 Cal.4th 833, 840-842; *Morillion vs. Royal Packing Co.* (2000) 22 Cal.4th

575, 582.

21. California Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight hours in a workday:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code §510.

22. Further, California Labor Code section 1198 provides,

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

23. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants implemented policies and procedures which misclassify general managers and exempt employees when, in fact, they should have been classified as non-exempt and, therefore, fail to provide aggrieved California non-exempt hourly general managers with overtime wages for the overtime hours that they worked at their overtime rate...

24. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to on or about March 2020 when Defendants properly re-classified them as non-exempt employees. Defendants employed policies and procedures which misclassified assistant managers as exempt when, in fact, they should have been classified as non-exempt and, therefore failed to provide Plaintiff and aggrieved California non-exempt hourly assistant managers with wages at the applicable minimum wage rate and/or overtime rate for all the time they actually worked. Defendants operate locations in California, including but not limited to locations in the city of Redlands.

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1 25. Defendants' policies, practices, and procedures compensated Plaintiff and other
2 current and former aggrieved California-based general managers and/or assistant managers who
3 were misclassified as exempt at their set salaried rate regardless of the number of hours worked.

4 26. As a result of these policies, Defendants failed to compensate Plaintiff and other
5 current and former aggrieved California-based general managers and/or assistant managers who
6 were misclassified as exempt at an overtime rate for all overtime hours worked when the
7 employees had already worked in excess of 8 up to 12 hours in a workday, over 40 hours in a
8 workweek, up to 8 hours on any seventh consecutive day in a workweek, hours worked in excess
9 of 12 hours in a workday, or over 8 hours on any seventh consecutive day in a workweek.

10 27. Defendant's policies and procedures were applied to current and former aggrieved
11 California-based general managers who were misclassified from in or around the period beginning
12 one-year period preceding the sending of the initial notice to the LWDA to the present and
13 resulted in non-exempt employees working time which was not compensated any wages in
14 violation of Labor Code sections 510, 1194, 1197, 1198 and the Wage Orders.

15 28. Defendant's policies and procedures were applied to Plaintiff and other current and
16 former aggrieved California-based general managers and/or assistant managers who were
17 misclassified from in or around the period beginning one-year period preceding the sending of the
18 initial notice to the LWDA to on or about March 2020, when Defendants properly re-classified
19 them as non-exempt employees, and resulted in non-exempt employees working time which was
20 not compensated any wages in violation of Labor Code sections 510, 1194, 1197, 1198 and the
21 Wage Orders.

22 29. **Failure to pay employees' wages to compensate them for workdays Defendants**
23 **failed to provide all required meal periods:** California law requires employers to provide
24 employees with a 30-minute uninterrupted meal period for each five hours of work before the end
25 of each five-hour period of work during which time the employee is relieved of all duties and
26 employer control. Labor Code §§226.7, 512, Wage Order 5 at §11; *Brinker Rest. Corp. v. Super.*
27 *Ct.* (2012) 53 Cal.4th 1004, 1039, 1041. If the employee is not relieved of all duties during a 30-
28 minute meal period, the meal period is considered "on duty" and the entire meal period is counted

1 as time worked. Wage Order 5 at §11. The employer satisfies this obligation if it relieves its
2 employees of all duty, relinquishes control over their activities and permits them a reasonable
3 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them
4 from doing so. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1040. If an
5 employee is not free to leave the workplace during a meal period, the employee is not relieved of
6 all duties during the meal period and is subject to the control of the employer and does not comply
7 with the requirement of an employee being relieved of all duties during their meal. *Bono*
8 *Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968. Further, an employer cannot
9 impede or discourage an employee from taking a meal period off premises and which they are
10 relieved of all duties and control of the employer. *Brinker v. Superior Court* (2012) 53 Cal.4th
11 1004, 1039. If an employer fails to provide an employee a meal period in accordance with the law,
12 the employer must pay the employee one hour of pay at the employee's regular rate of
13 compensation for each workday that a legally required meal period was not provided or was not
14 duty free. *Id.*

15 30. Defendants implemented policies and and/or implanted policies which failed to
16 provide Plaintiff and current and former aggrieved California-based general managers and/or
17 assistant managers who were misclassified as exempt with all meal periods as required by and in
18 compliance with the law, including full duty free and timely meal periods. Plaintiffs alleges that
19 Defendants regularly employed him and other current and former aggrieved California-based
20 general managers and/or assistant managers who were misclassified as exempt for shifts longer
21 than five (5) hours and/or shifts longer than ten (10) hours. However, as a result of Defendants'
22 misclassification of Plaintiff and other current and former aggrieved California-based general
23 managers and/or assistant managers as exempt employees, Plaintiff and other current and former
24 aggrieved California-based general managers and/or assistant managers who were misclassified as
25 exempt were not provided a duty-free uninterrupted meal period of no less than thirty (30) minutes
26 for each five-hour period of work.

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1 31. Additionally, Defendants failed to provide Plaintiff and other current and former
2 aggrieved California-based general managers and/or assistant managers who were misclassified as
3 exempt with a premium wage of (1) one hour of premium pay at the employee's regular rate of
4 pay for each workday they did not receive all legally required and compliant meal periods, in
5 violation of Labor Code section 226.7 and Wage Order 5 section 11.

6 32. This practice resulted in Plaintiff and other current and former aggrieved
7 California-based general managers and/or assistant managers who were misclassified as exempt
8 not receiving wages to compensate them for workdays which Defendants did not provide them
9 with all legally required and legally compliant meal periods in compliance with California law.

10 33. **Failure to pay employees' wages to compensate them for workdays defendants**
11 **failed to provide all required rest breaks:** California law states that "[e]very employer shall
12 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
13 middle of each work period. The authorized rest period time shall be based on the total hours
14 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
15 thereof. ... If an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
17 employee's regular rate of compensation for each workday that the rest period is not provided."
18 Wage Order 5 at §12, Labor Code §226.7. Under California law, "[e]mployees are entitled to 10
19 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
20 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
21 on." *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 5
22 at §12. Rest periods must be in the middle of each work period. Wage Order 5 at §12. In addition,
23 if an employer requires employees to stay on the premises during the rest period, they are under
24 control of the employer and they are not relieved of all duties in violation of California law.
25 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 271. If an employer fails to provide
26 an employee a timely and legally compliant rest period, the employer must pay the employee one
27 hour of pay at the employee's regular rate of compensation for each workday that a legally
28 required meal period was not provided or was not duty free. Wage Order 5 at §12.

1 34. Defendants implemented policies and and/or implanted policies which failed to
2 provide Plaintiff and current and former aggrieved California-based general managers and/or
3 assistant managers who were misclassified as exempt with uninterrupted duty free 10-minute rest
4 periods for each four hours or major fraction thereof worked. Plaintiffs alleges that Defendants
5 regularly employed him and other current and former aggrieved California-based general
6 managers and/or assistant managers who were misclassified as exempt for shifts longer than three-
7 and-a-half (3.5) hours. However, as a result of Defendants' misclassification of Plaintiff and other
8 current and former aggrieved California-based general managers and/or assistant managers as
9 exempt employees, Plaintiff and other current and former aggrieved California-based general
10 managers and/or assistant managers who were misclassified as exempt were not provided all
11 required duty-free rest periods of a net ten (10) minutes for every four (4) hours worked or major
12 fraction thereof.

13 35. Defendants failed to provide Plaintiff and other current and former aggrieved
14 California-based general managers and/or assistant managers who were misclassified as exempt
15 with a premium wage of (1) one hour of premium pay at the employee's regular rate of pay for
16 each workday they did not receive all legally required and compliant rest periods, in violation of
17 Labor Code section 226.7 and Wage Order 5 at section 12.

18 36. This practice resulted in Plaintiff and other current and former aggrieved
19 California-based general managers and/or assistant managers who were misclassified as exempt
20 not receiving wages to compensate them for workdays which Defendants did not provide them
21 with all legally required and/or legally compliant rest periods in compliance with California law.

22 37. **Failure to timely pay earned wages during employment:** In California, wages
23 must be paid at least twice during each calendar month on days designated in advance by the
24 employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned
25 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
26 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
27 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
28 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within

1 seven (7) calendar days following the close of the payroll period in which wages were earned.
2 Labor Code §204(d).

3 38. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
4 to timely pay Plaintiff's and current and former aggrieved California-based general managers
5 and/or assistant managers who were misclassified as exempt earned wages (including overtime
6 wages, meal period premium wages, and/or rest period premium wages), in violation of Labor
7 Code section 204.

8 39. Defendants' aforementioned policies, practices, and/or procedures resulted in their
9 failure to pay Plaintiff and current and former aggrieved California-based general managers and/or
10 assistant managers who were misclassified as exempt their earned wages within the applicable
11 time frames outlined in Labor Code section 204.

12 40. **Failure to provide accurate wage statements:** California Labor Code section
13 226(a) provides (inter alia) that, upon paying an employee his or her wages, the employer must
14 "furnish each of his or her employees ... an itemized statement in writing showing: (1) gross wages
15 earned, (2) total hours worked by the employee, except for any employee whose compensation is
16 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
17 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
18 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
19 (4) all deductions, provided, that all deductions made on written orders of the employee may be
20 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period
21 for which the employee is paid, (7) the name of the employee and his or her social security
22 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate by the employee."

25 41. As a result of Defendants' aforementioned violations of the Labor Code (including
26 failure to pay overtime wages for overtime hours worked, failure to pay meal period premiums,
27 and/or failure to pay rest period premiums) rendered inaccurate the pay calculations of Plaintiff
28 and other current and former aggrieved California-based general managers and/or assistant

managers who were misclassified as exempt, in violation of Labor Code section 226.

42. **Failure to timely pay final wages:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination or within 72 hours of resignation. Labor Code §§201, 202.

43. Labor Code section 201(a) states that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202(a) continues, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter...." Finally, Labor Code section 203(a) provides, "[i]f an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days...."

44. As a result of Defendants' aforementioned violations of the Labor Code (failure to pay overtime wages for overtime hours worked, failure to pay meal period premiums, and/or failure to pay rest period premiums) he and other current and former aggrieved California-based general managers and/or assistant managers who were misclassified as exempt were not timely paid all their final wages after each employee's termination and/or resignation, as required by Labor Code sections 201, 202, and 203.

45. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code section 2699.3.

46. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. Plaintiff filed notice on November 12, 2020, with the Labor and Workforce Development Agency ("LWDA") giving the LWDA written notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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1 47. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
2 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
3 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
4 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
5 Plaintiff's claims.

6 48. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
7 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
8 512, 1194, and 1198 and the IWC Wage Orders during the Civil Penalty Period in the following
9 amounts:

10 a. For violations of Labor Code sections 201, 202, 203, 226.7, 512, and 1198;
11 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation [penalty amounts established by Labor Code section 2699(f)(2)].

14 b. For violations of Labor Code section 204: one hundred dollars (\$100) for
15 any initial violation for each failure to pay each employee, and for each subsequent violation, or
16 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
17 employee, plus twenty-five percent (25%) of the amount unlawfully withheld, as established by
18 Labor Code section 210.

19 c. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
20 for each employee for each pay period for the initial violation, and for each subsequent violation,
21 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
22 established by Labor Code section 226.3].

23 d. For violations of Labor Code section 510, fifty dollars (\$50) for each
24 employee for each pay period for the initial violation, and for each subsequent violation, one
25 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
26 established by Labor Code section 558] and any unpaid wages.

27 e. For violations of Labor Code section 1194 and 1197, one hundred dollars
28 (\$100) for each underpaid employee for each pay period for the initial violation, and for each

subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

49. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: March 8, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: _____



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Pooja V. Patel, Esq.
Attorneys for Plaintiff SCOTT AUSTIN on
behalf of himself and other current and
former aggrieved California-based general
managers and assistant managers who were
misclassified as exempt employees