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9 MARVIN MANN, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SANTA CLARA**

12 **(UNLIMITED JURISDICTION)**

13 MARVIN MANN, on behalf of himself, all
14 others similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
16 employees” under the Labor Code Private
17 Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

20 WALNUT BREWERY, INC., a Colorado
21 corporation doing business as Rock Bottom
22 Brewery; SPB HOSPITALITY, LLC, a
23 Delaware limited liability company; and DOES
24 1-50, inclusive,

25 *Defendants.*

Case No.: **21CV377897**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, MARVIN MANN (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant WALNUT
5 BREWERY, INC., a Colorado corporation doing business as Rock Bottom Brewery, SPB
6 HOSPITALITY, LLC, a Delaware limited liability company, and DOES 1-50, inclusive
7 (collectively “Defendants”) for alleged violations of the California Labor Code, Industrial
8 Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the Business and
9 Professions Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all
13 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
14 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
15 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
16 itemized written wage statements, (5) Timely pay all final wages upon termination of
17 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,
18 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative
19 action.

20 **PARTIES**

21 3. Plaintiff MARVIN MANN is a resident of California.

22 4. In approximately July 2020, Defendants began to employ Plaintiff to work at their
23 Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt hourly bartender
24 and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire
25 until on or about November 17, 2020, when his employment ended.

26 5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
27 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
28 Labor Code § 2699(c).

6. Defendant WALNUT BREWERY, INC., is a corporation organized and existing
under the laws of Colorado and a citizen of California based on Plaintiff’s information and belief.

7. Defendant SPB HOSPITALITY, LLC, is a limited liability company organized



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and existing under the laws of Delaware based on Plaintiff's information and belief.

8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The Class is defined as follows: All California-based persons Defendants employed on an hourly basis, including as bartenders, servers, bussers, dishwashers, cooks, chefs, and in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action



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1 (“Class” or “Class Members”).

2 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765 (b), Plaintiff reserves the
3 right to amend or modify the class definition with greater specificity, by further division into
4 subclasses and/or by limitation to particular issues.

5 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California laws.

9 16. **Commonality and Predominance:** Common questions of law and fact exist as to
10 all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to provide the Class Members with all meal and
13 rest periods in compliance with California law;

14 B. Whether Defendants failed to pay all wages earned to the Class Members
15 for all hours worked at the correct rates of pay;

16 C. Whether Defendants failed to indemnify the Class Members for the
17 reasonable expenses they incurred during the course of performing their duties;

18 D. Whether Defendants knowingly and intentionally failed to provide the
19 Class Members with accurate written wage statements;

20 E. Whether Defendants willfully failed to provide the Class Members with
21 timely final wages upon termination of employment;

22 F. Whether Defendants willfully failed to maintain accurate employment
23 records of the Class Members;

24 G. Whether Defendants engaged in unfair competition within the meaning of
25 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

26 H. Whether Class Members are entitled to restitution of money or property
27 that Defendants may have acquired from them through alleged Labor Code violations.

28 17. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.



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18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

21. In approximately July 2020, Defendants began to employ Plaintiff to work at their Rock Bottom restaurant and brewery in Campbell, California, as a non-exempt, hourly bartender and server. Plaintiff continuously worked for Defendants in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

22. At all relevant times, Defendants compensated Plaintiff and the Class Members on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

23. Defendants failed to provide Plaintiff and the Class Members with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Defendants required Plaintiff and the Class Members to work through their meal periods. Defendants failed to provide Plaintiff



1 and the Class Members from taking meal periods due to low staffing and heavy workload. At all
2 relevant times, Defendants required Plaintiff and the Class Members to work while they ate. On
3 those seldom occasions where Plaintiff and the Class Members tried to take their duty-free meal
4 periods, management disciplined them and expressly prohibited them from taking the meal
5 period.

6 24. Moreover, Defendants failed to authorize or permit Plaintiff and the Class
7 Members to take duty-free, unrestricted ten-minute rest periods every four hours worked or major
8 portion thereof in violation of California law. Due to the high workload and low staffing levels,
9 Defendants failed to authorize and permit Plaintiff and the Class Members to take a ten-minute,
10 paid, duty-free rest break every four hours or major portion thereof. Defendants did not seek an
11 exemption from the rest period protections of the Wage Order from the California Division of
12 Labor Standards Enforcement. When Plaintiff and the Class Members clocked-out for the day,
13 the computer always displayed a “break violation” message, which management instructed
14 Plaintiff and the Class Members to ignore.

15 25. Furthermore, Defendants failed to pay premium wages for each workday they
16 failed to provide Plaintiff and the Class Members with a timely meal period in compliance with
17 California law. Defendants also failed to pay premium wages for each workday they failed to
18 provide Plaintiff and the Class Members with a timely rest period in compliance with California
19 law. Plaintiff complained to management about Defendants’ meal and rest period violations, and
20 their failure to hire sufficient staff. Defendants took no action to resolve his complaints.

21 26. Defendants required Plaintiff and the Class Members to incur certain business
22 expenses in the course of performing their duties. At all relevant times, Defendants required
23 Plaintiff and the Class Members to use their personal mobile telephones to perform their job duties
24 but did not reimburse them for their mobile phone expenses, nor did they provide them with
25 mobile phones as an alternative. Defendants frequently contacted Plaintiff and the Class
26 Members, and required the employees to communicate with each other and coordinate scheduling
27 and other business affairs, on their personal mobile phones during and outside work hours.

28 27. Defendants also required Plaintiff and the Class Members to perform work while
clocked-out and failed to compensate them for this time. Defendants’ management instructed
Plaintiff and the Class Members to clock-out at specific time, even while still working. At all
relevant times, Defendants instructed Plaintiff and the Class Members to perform necessary work



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1 duties while clocked-out, including but not limited to, counting cash in the cash drawer,
2 restocking, preparing for the next shift by stocking the work station, disposing of garbage, and
3 cleaning. At all relevant times, Plaintiff and the Class Members spent an average of 30-minutes
4 per day performing such work while they were clocked-out. Defendants also required Plaintiff
5 and the Class Members to coordinate schedules and communicate with management and other
6 employees, all while clocked-out. Defendants failed to compensate Plaintiff and the Class
Members for the time they spent on these off-the-clock activities.

7 28. Defendants failed to issue to Plaintiff and the Class Members complete and
8 accurate wage statements as a result of their failure to state all hours worked at the correct rates
9 of pay, and all wages earned including rest period and meal period premium wages as described
10 above. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages
11 described above during and at the conclusion of employment. Moreover, Defendants failed to
12 maintain accurate employee records of Plaintiff and the Class Members.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

16 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 30. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

20 31. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and
23 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.

24 32. In relevant part, California Labor Code § 512 states:

25
26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the



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1 employer and employee.

2 An employer shall not employ an employee for a work period of
3 more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes, except that if the
5 total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

6 33. In relevant part, § 12 of the Wage Order states:

7
8 **Rest Periods**

9 (A) “Every employer shall authorize and permit all employees
10 to take rest periods, which insofar as practicable shall be in the
11 middle of each work period. The authorized rest period time shall
12 be based on the total hours worked daily at the rate of ten (10)
13 minutes net rest time per four (4) hours or major fraction thereof.
14 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.”

15 (B) If an employer fails to provide an employee a rest period in
16 accordance with the applicable provisions of this Order, the
17 employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each work day that
the rest period is not provided.”

18 34. In relevant part, § 11 of the Wage Order states:

19 **Meal Periods**

20 (A) “No employer shall employ any person for a work period
21 of more than five (5) hours without a meal period of not less than
22 30 minutes, except that when a work period of not more than six
23 (6) hours will complete the day’s work the meal period may be
24 waived by mutual consent of the employee and the employer.
25 Unless the employee is relieved of all duty during a 30-minute
26 meal period, the meal period shall be considered an ‘on duty’ meal
27 period and counted as time worked. An ‘on duty’ meal period shall
28 be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is
agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”



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(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

35. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

36. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

37. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

39. At all relevant times, Defendants have intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Plaintiff and the Class Members as required by law. Defendants also intentional and improperly failed to provide all duty-free rest breaks free from any work or duties to Plaintiff as required by law. Due to the workload and failure to hire sufficient staff members, Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal periods and 10-minute rest breaks every four hours



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1 worked or major fraction thereof as required by the Wage Order. Moreover, Defendants failed to
2 pay Plaintiff and the Class Members premium wages on workdays they failed to provide them
3 with one or more timely meal and/or rest periods as required by California law.

4 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
breaks required by California law.

7 41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
8 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
9 wages owed for all meal periods and rest breaks not provided to them.

10 42. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
11 the Class Members are entitled to premium wages for workdays in which one or more off-duty
12 meal periods were not provided to them, and for workdays in which one or more rest breaks were
13 not provided to them.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

16 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

17 **(By Plaintiff and the Class against Defendants)**

18 43. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

19 44. At all relevant times, Plaintiff and the other Class Members have been non-exempt
20 employees of Defendants and entitled to the benefits and protections of California Labor Code
§§ 510, 1194, 1197, and 1198 and the Wage Order.

21 45. In relevant part, § 3 of the Wage Order states:

22 **(A) Daily Overtime - General Provisions**

23 (1) The following overtime provisions are applicable to employees
24 18 years of age or over and to employees 16 or 17 years of age who
25 are not required by law to attend school and are not otherwise
26 prohibited by law from engaging in the subject work. Such
employees shall not be employed more than eight (8) hours in any
27 workday or more than 40 hours in any workweek unless the
employee receives one and one-half (1 ½) times such employee's
28 regular rate of pay for all hours worked over 40 hours in the
workweek. Eight (8) hours of labor constitutes a day's work.
Employment beyond eight (8) hours in any workday or more than



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six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

46. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. 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. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

47. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

48. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

49. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.



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1 50. In conjunction, these provisions of the Labor Code require employers to pay non-
2 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
3 worked, including unrecorded hours when the employer knew or reasonably should have known
4 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

5 51. At all relevant times during the applicable limitations period, Defendants failed to
6 compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay,
7 including, but not limited to, all regular and overtime wages for hours they worked while off-the-
8 clock. At Defendants' direction, Plaintiff and the Class Members have worked off-the-clock
9 without pay, including after clocking-out at the end of their shifts. Such work included: counting
10 the cash drawer, restocking, preparing for the next shift, taking out the garbage, and cleaning.

11 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
12 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
13 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
California law.

14 53. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
15 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
16 the full amount of wages earned during each pay period during the applicable limitations period,
17 including minimum and overtime wages.

18 54. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
19 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
20 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
21 to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against Defendants)

25 55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 56. At all relevant times, Plaintiff and the Class Members have been non-exempt
27 employees of Defendants and entitled to the benefits and protections of the California Labor Code
28 §§ 1198 and 2802 and the Wage Order.



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1 57. In pertinent part, California Labor Code § 2802 (a) states:

2 “An employer shall indemnify his or her employee [s] for all
3 necessary expenditures incurred by the employee in direct
4 consequence of the discharge of his or her duties.”

5 58. California Labor Code § 1198 prohibits employers from employing their
6 employees under conditions prohibited by the Wage Order.

7 59. At all relevant times during the applicable limitations period, Defendants required
8 Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify
9 them for both during and after their employment ended. Defendants required Plaintiff and the
10 Class Members to use their personal mobile phones for work-related activities without
11 reimbursing them for mobile phone expenses.

12 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
14 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
15 during the course of performing their duties.

16 61. Therefore, pursuant to California Labor Code § 2802 (b), Plaintiff and the Class
17 Members are entitled to reimbursement for all necessary expenditures and losses and interest
18 thereon, due and owing to them within four years of the date of the filing of the Complaint until
19 the entry of judgment.

20 62. Accordingly, with respect to this cause of action, on behalf of himself and the
21 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’
22 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

25 **(Lab. Code § 226)**

26 **(By Plaintiff and the Class against all Defendants)**

27 63. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 64. At all relevant times during the applicable limitations period, Plaintiff and the
other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code § 226.

 65. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Class



Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

- (1) Gross wages earned,
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- (3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) Net wages earned,
- (6) The inclusive dates of the period for which the employee is paid,
- (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) The name and address of the legal entity that is the employer, and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

66. Pursuant to California Labor Code § 226 (e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

67. Pursuant to California Labor Code § 226 (e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226 (a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

- A. The amount of the gross wages or net wages paid to the employee during



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1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226 (a);

3 B. Which deductions the employer made from gross wages to determine the
4 net wages paid to the employee during the pay period;

5 C. The name and address of the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
7 address of the legal entity that secured the services of the employer during the pay period; and

8 D. The name of the employee and only the last four digits of his or her social
9 security number or an employee identification number other than a social security number.

10 68. “Promptly and easily determine,” as stated in California Labor Code §
11 226 (e), means a reasonable person would be able to readily ascertain the information without
12 reference to other documents or information.

13 69. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
14 with all meal and rest periods in compliance with California law. They also failed to provide them
15 with premium wages on workdays they failed to provide them with one or more meal and/or rest
16 periods in compliance with California law. Further, Defendants failed to compensate Plaintiff and
17 the other Class Members for all hours worked. As a result, Defendants have failed to properly
18 itemize Plaintiff and the other Class Members’ gross and net wages earned, total hours worked,
19 hourly rate of pay, the corresponding number of hours worked at each hourly rate, and other
20 requirements of California Labor Code § 226. As a result, Defendants have violated California
21 Labor Code § 226.

22 70. Defendants’ violation was knowing and intentional. Defendants instructed
23 Plaintiff and the Class Members to ignore the “break violation” message when they clocked-out
24 on the computer. Plaintiff and the Class Members complained about Defendants’ Labor Code
25 violations to management. Plaintiff and the Class Members notified Defendants that they failed
26 to provide them with duty-free meal and rest periods. Defendants ignored their complaints.

27 71. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

72. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
2 wage statements were violated and they were misled about the amount of wages they had actually
3 earned and were owed. In addition, the absence of accurate information on their wage statements
4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
5 and mathematical computations to determine the amounts of wages owed, has caused difficulty
6 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
7 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
8 and the other Class Members were not able to ascertain from the wage statements whether
9 Defendants complied with their obligations under California Labor Code § 226 (a).

10 73. Pursuant to California Labor Code § 226 (e), Plaintiff and the other Class
11 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
12 for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and
13 one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay
14 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member,
15 and are also entitled to an award of costs and reasonable attorneys' fees.

16 74. Accordingly, with respect to this cause of action, on behalf of himself and the other
17 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
18 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
19 proof.

20 **FIFTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(Lab. Code §§ 201-203)**

23 **(By Plaintiff and the Class against all Defendants)**

24 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 76. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class have been non-exempt employees of Defendants and entitled to the benefits and
27 protections of California Labor Code §§ 201-203, and the Wage Order.

28 77. Labor Code § 201 provides that all earned and unpaid wages of an employee who
is discharged are due and payable immediately at the time of discharge.

78. Labor Code § 202 provides that all earned and unpaid wages of an employee who
quits after providing at least 72-hours notice before quitting are due and payable at the time of



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1 quitting and that all earned and unpaid wages of an employee who quits without providing at
2 least 72-hours notice before quitting are due and payable within 72 hours.

3 79. Labor Code § 203 provides that the wages of an employee continue on a daily
4 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
5 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

6 80. Defendants failed to pay Plaintiff and the Class Members whose employment ended
7 all of the earned but unpaid wages described above by the conclusion of their employment with
8 Defendants. By failing to pay Plaintiff and the Class Members as set forth above by such time,
9 Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

10 81. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
11 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
12 Defendants have deliberately maintained policies and practices that violate the requirements of
13 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
14 to comply with those legal requirements.

15 82. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
16 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
17 for each Class Member.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

20 **(Lab. Code §§ 1174, 1174.5, 1198)**

21 **(By Plaintiff and the Class against all Defendants)**

22 83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 84. At all relevant times, Plaintiff and the Class have been non-exempt employees of
24 Defendants and entitled to the benefits and protections of California Labor Code §§ 1174,
25 1174.5, 1198 and the Wage Order.

26 85. Labor Code § 1174, which also pertains to recordkeeping, states:

27 Every person employing labor in this state shall:

28 ...

(c) Keep a record showing the names and addresses of all
employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or
establishments at which employees are employed, payroll records
showing the hours worked daily by and the wages paid to, and the



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number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

86. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

87. Section 7 of Wage Order states,

A. Every employer shall keep accurate information with respect to each employee including the following:

- 1) Full name, home address, occupation and social security number.
- 2) Birth date, if under 18 years, and designation as a minor.
- 3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- 4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- 5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- 6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.



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- B. Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

- C. All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

- D. Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

88. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

89. Defendants failed to pay Plaintiff and the Class Members for work performed after they clocked-out. Defendants failed to provide Plaintiff and the Class Members with all meal and rest periods in compliance with California law. Defendants also failed to provide Plaintiff and the Class Members with premium wages on workdays they failed to provide them with one or more meal and/or rest periods in compliance with California law. Defendants did not record the hours worked off-the-clock. As a results, Defendants have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Plaintiff and the Class Members' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

90. Plaintiff is informed and believes that Defendants' failure to maintain the records of Plaintiff and the Class have been willful in that Defendants have the duty and ability to maintain accurate employment records in accordance with Labor Code §§ 1174, 1174.5, and 1198 and the Wage Order but have intentionally adopted policies or practice that are incompatible with those requirements.

91. As a result of Defendants' unlawful conduct, Plaintiff and the other class

1 members have suffered damages in an amount, subject to proof, to the extent they were not paid
2 the full amount of wages earned during each pay period during the applicable limitations period,
3 including but not limited to the total premium wages earned for missed meal and rest periods,
4 split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid
5 reporting time pay.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(Bus. & Prof. Code §§ 17200, et seq.)**

9 **(By Plaintiff and the Class against all Defendants)**

10 92. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

11 93. At all relevant times during the applicable limitations period, Plaintiff and the
12 other Class Members have been employees of Defendants and entitled to the benefits and
13 protections of the Business and Professions Code §§ 17200, et seq.

14 94. The unlawful conduct of Defendants alleged herein amounts to and constitutes
15 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
16 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
17 unfairly gained a competitive advantage over other comparable companies doing business in
18 California that comply with their legal obligations to, among other things, pay their employees
19 premium wages for workdays in which they did not provide employees with one or more meal
20 and rest periods, reimburse their employees for reasonable expenses incurred during the course
21 of performing their duties, and pay them all earned wages for all regular and overtime hours
22 worked.

23 95. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
24 other Class Members have suffered injuries in fact and lost money or property. Defendants
25 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
26 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
27 incurred during the course of performing their duties.

28 96. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
other Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
and unfair business practices.



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1 97. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
2 connection with their unfair competition claims pursuant to California Code of Civil Procedure
3 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

4 **EIGHTH CAUSE OF ACTION**

5 **CIVIL PENALTIES**

6 **(By Plaintiff and the Class against all Defendants)**

7 98. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 99. The "Aggrieved Employees" are all members of the Class defined above who
9 Defendants employed during the period beginning December 31, 2019 and ending on the date
10 that final judgment is entered in this action.

11 100. Labor Code § 204 states

12 (a) All wages, other than those mentioned in Section 201,
13 201.3, 202, 204.1, or 204.2, earned by any person in any
14 employment are due and payable twice during each calendar
15 month, on days designated in advance by the employer as the
16 regular paydays. Labor performed between the 1st and 15th days,
17 inclusive, of any calendar month shall be paid for between the 16th
18 and the 26th day of the month during which the labor was
19 performed, and labor performed between the 16th and the last day,
20 inclusive, of any calendar month, shall be paid for between the 1st
21 and 10th day of the following month. ...

22 (b) (1) Notwithstanding any other provision of this
23 section, all wages earned for labor in excess of the normal work
24 period shall be paid no later than the payday for the next regular
25 payroll period.

26 (2) An employer is in compliance with the requirements of
27 subdivision (a) of Section 226 relating to total hours worked by the
28 employee, if hours worked in excess of the normal work period
during the current pay period are itemized as corrections on the
paysstub for the next regular pay period. Any corrections set out in
a subsequently issued paysstub shall state the inclusive dates of the
pay period for which the employer is correcting its initial report of
hours worked.

(c) However, when employees are covered by a collective
bargaining agreement that provides different pay arrangements,
those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied



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1 by the payment of wages for weekly, biweekly, or semimonthly
2 payroll if the wages are paid not more than seven calendar days
following the close of the payroll period.

3 101. Defendants paid wages to employees on regular intervals. Defendants, however,
4 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
5 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
6 Employees on such intervals for all wages earned and all hours worked.

7 102. During the applicable time period, Defendants violated California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

9 103. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on
10 behalf of themselves and other current or former employees, to bring a civil action to recover
11 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

12 104. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are
13 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
14 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
applicable limitations period in the following amounts:

15 A. For violations of California Labor Code § 204, one hundred dollars
16 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
17 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
18 (penalty amounts established by California Labor Code § 210).

19 B. For violations of California Labor Code § 226 (a), two hundred fifty
20 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
21 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
established by California Labor Code § 226.3).

22 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
23 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
24 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
25 established by California Labor Code § 558).

26 D. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
28 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per



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1 pay period (regardless of whether the initial violations were intentionally committed) (penalty
2 amounts established by California Labor Code § 1197.1).

3 E. For violations of California Labor Code § 1174, five hundred dollars
4 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
5 California Labor Code § 1174.5).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
7 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
8 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
9 period for each subsequent violation (penalty amounts established by California Labor Code
§ 2699 (f) (2)).

10 105. Plaintiff has complied with the procedures for bringing suit specified in
11 California Labor Code § 2699.3. By letter dated December 31, 2020, Plaintiff filed written notice
12 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
13 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
14 to have been violated, including the facts and theories to support the alleged violations. A true
15 and correct copy of the notice to the LWDA dated December 31, 2020 is attached as Exhibit A.
16 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
17 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
18 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
does not intend to investigate these allegations.

19 106. Pursuant to California Labor Code § 2699 (g), Plaintiff and the Class Members
20 are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with
21 their claims for civil penalties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
24 relief and judgment against Defendants as follows:

- 25 A. An order that the action be certified as a class action;
- 26 B. An order that Plaintiff be appointed class representative;
- 27 C. An order that counsel for Plaintiff be appointed class counsel;
- 28 D. Unpaid Wages;
- E. Actual Damages;



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- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 03 / 10 / 2021

By 

DAVID SPIVAK,
CARL KAPLAN,
MAYA CHEAITANI,
Attorneys for Plaintiff, MARVIN MANN, and
all others similarly situated



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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 31, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: *Marvin Mann/Walnut Brewery, Inc., et al.*

To Whom It May Concern:

This notice concerns the following employers:

1. Walnut Brewery, Inc., a Colorado corporation, doing business as Rock Bottom Brewery; and
2. SPB Hospitality, LLC, a Delaware limited liability company.

Collectively, the aforementioned employers are herein referred to as “Rock Bottom.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Marvin Mann (hereafter “Mann”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to bartenders, servers, bussers, dishwashers, cooks, chefs, and other hourly employees in comparable positions (hereafter referred to collectively as “Aggrieved Employees”) by Rock Bottom of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Rock Bottom has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California.

Mann and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order” or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In approximately July 2020, Rock Bottom began to employ Mann to work at its Rock Bottom restaurant and brewery in Campbell, California as a non-exempt, hourly bartender and server. Mann continuously worked for Rock Bottom in this capacity from the time of his hire until on or about November 17, 2020, when his employment ended.

At all relevant times, Rock Bottom compensated Mann and the other Aggrieved Employees on an hourly basis and issued their paychecks on a weekly basis. At all relevant times, Rock Bottom classified Mann and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

Rock Bottom failed to provide Mann and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Rock Bottom required Mann and the Aggrieved Employees to work through their meal periods. Rock Bottom failed to provide Mann and the Aggrieved Employees from taking meal periods due to low staffing and heavy workload. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to work while they ate. On those seldom occasions where Mann and the Aggrieved Employees tried to take their duty-free meal periods, management disciplined them and expressly prohibited them from taking the meal period.

Moreover, Rock Bottom failed to authorize or permit Mann and the Aggrieved Employees to take duty-free, unrestricted 10-minute rest periods every four hours worked or major portion thereof in violation of California law. Due to high workload and low staffing levels, Rock Bottom failed to authorize and permit Mann and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. Rock Bottom did not seek

an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. When Mann and the Aggrieved Employees clocked-out for the day, the computer always displayed a “break violation” message, which management instructed Mann and the Aggrieved Employees to ignore.

Furthermore, Rock Bottom failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely meal period in compliance with California law. Rock Bottom also failed to pay premium wages for each workday it failed to provide Mann and the other Aggrieved Employees with a timely rest period in compliance with California law. Mann complained to management about Rock Bottom’s meal and rest period violations, and their failure to hire sufficient staff. Rock Bottom took no action to resolve his complaints.

Rock Bottom required Mann and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Rock Bottom required Mann and the Aggrieved Employees to use their personal mobile telephones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones as an alternative. Rock Bottom frequently contacted Mann and the Aggrieved Employees, and required the employees to communicate with each other and coordinate scheduling and other business affairs, on their personal mobile phones during and outside work hours.

Rock Bottom also required Mann and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. Rock Bottom management instructed Mann and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Rock Bottom instructed Mann and the Aggrieved employees to perform necessary work duties while clocked-out, including but not limited to, counting cash in the cash drawer, restocking, preparing for the next shift by stocking the work station, disposing of garbage, and cleaning. At all relevant times, Mann and the Aggrieved Employees spent an average of 30 minutes a day performing such work while they were clocked-out. Rock Bottom also required Mann and the Aggrieved

Employees to coordinate schedules and communicate with management and other employees, all while clocked out. Rock Bottom failed to compensate Mann and the Aggrieved Employees for the time they spent on these off-the-clock activities.

Rock Bottom failed to issue to Mann and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages as described above. Rock Bottom also failed to timely pay Mann and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Rock Bottom failed to maintain accurate employee records of Mann and the Aggrieved Employees.

For the reasons stated herein, Mann alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Rock Bottom failed to provide Mann and the other Aggrieved Employees with all timely, off-duty rest breaks and meal periods;
- b) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Rock Bottom failed to compensate Mann and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;
- d) Rock Bottom failed to pay Mann and the other Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum, regular and overtime pay due to off-the-clock work;
- e) Rock Bottom failed to pay Mann and the other Aggrieved Employees additional "reporting time" wages on days during which they

communicated by phone with Rock Bottom management or on-duty employees outside of their scheduled work hours.

- f) Rock Bottom failed to indemnify Mann and the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- g) Rock Bottom failed to provide Mann and the Aggrieved Employees with accurate wage statements;
- h) Rock Bottom failed to timely pay Mann and the Aggrieved Employees all earned and unpaid wages during employment;
- i) Rock Bottom failed to timely pay Mann and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- j) Rock Bottom willfully failed to maintain accurate employment records regarding Mann and the Aggrieved Employees.

Accordingly, Mann now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Rock Bottom's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry[.]" Wage Order § 1. The phrase "public housekeeping industry" includes restaurants. *Id.* § 2 (P)(1).

At all relevant times during the applicable limitations period, Rock Bottom operated restaurants. Accordingly, Mann and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

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.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and

Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Rock Bottom has intentionally and improperly failed to provide all duty-free meal periods free from any work or duties to Mann and the other Aggrieved Employees as required by law. Rock Bottom also intentionally and improperly failed to provide all duty-free rest breaks free from any work or duties to Mann and the other Aggrieved Employees as required by law. Due to the workload and failure to hire sufficient staff members, Rock Bottom denied Mann and the other Aggrieved Employees their 30-minute off-duty meal period and 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Moreover, Rock Bottom failed to pay Mann and Aggrieved Employees premium wages on workdays it failed to provide them with one or more timely meal and rest periods as required by law. In failing to do so, Rock Bottom violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure to Indemnify for Expenses
(Lab Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

At relevant times during the applicable limitations period, Rock Bottom required Mann and the Aggrieved to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Mann seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for

all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

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.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington*

Memorial Hosp. v. Superior Court (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Rock Bottom knowingly failed to pay Mann and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked while off-the-clock. At Rock Bottom’s direction, Mann and the Aggrieved Employees have worked off the clock without pay, including after clocking out at the end of their shifts. Such work included: counting the cash drawer, restocking, preparing for the next shift, taking out the garbage, cleaning.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;

- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Rock Bottom violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Rock Bottom failed to state in the wage statements it issued to Mann and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts (as described above).

Rock Bottom's violation was knowing and intentional. Rock Bottom instructed Mann and the Aggrieved Employees to ignore the "break violation" message when they clocked-out on the computer. Mann and the Aggrieved Employees complained about Rock Bottom's Labor Code violations to management. Mann and the Aggrieved Employees notified Rock Bottom that it failed to provide them with duty-free meal and rest periods. Rock Bottom ignored their complaints.

Accordingly, Mann now seeks civil penalties for the Labor Code violations that Rock Bottom has committed against himself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

California Labor Code § 204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Rock Bottom failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Mann seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if 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 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, 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 at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Rock Bottom failed to provide Mann and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages they earned for work performed off-the-clock. As a result, Rock Bottom failed to pay Mann and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Rock Bottom has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Mann seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which

subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Rock Bottom failed to pay Mann and the other Aggrieved Employees for work performed after they clocked out. Rock Bottom failed to provide Mann and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Rock Bottom also failed to provide Mann and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Rock Bottom did not record the hours worked off the clock. As a result, Rock Bottom has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Mann and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Mann seeks civil penalties from Rock Bottom on behalf of himself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Marvin Mann
Walter Haines, Esq.

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