

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Linfield

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 MARALLE MESSRELIAN (SBN 316974)

maralle@spivaklaw.com

3 MAYA CHEAITANI (PL 507677)

maya@spivaklaw.com

4 THE SPIVAK LAW FIRM

5 16530 Ventura Blvd., Suite 203

Encino, CA 91436

6 Telephone (213) 725-9094

7 Facsimile (213) 634-2485

8 Attorneys for Plaintiff,

9 ERICA BROWN, and all others similarly situated

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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 ERICA BROWN, as an “aggrieved employee” on
14 behalf of other similarly situated “aggrieved
15 employees” under the Labor Code Private
16 Attorney General Act of 2004,

17 *Plaintiff,*

18 vs.

19 MANNA DEVELOPMENT GROUP, LLC, a
20 California limited liability company; RISEN
21 BREAD, LLC, a California limited liability
22 company; and DOES 1-50, inclusive,

23 *Defendants.*

Case No.: 21STCV08854

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff, ERICA BROWN (hereafter “Plaintiff”), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complaints and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants MANNA DEVELOPMENT GROUP, LLC, a California
7 limited liability company, RISEN BREAD, LLC, a California limited liability company, and
8 DOES 1-50, inclusive (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated and aggrieved current and former
11 employees who worked in California as hourly, non-exempt employees, for civil penalties and
12 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest and
13 meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned
14 for all hours worked at the correct rates of pay; (4) Provide accurate written wage statements; and
15 (5) Timely pay wages during and upon termination of employment. Accordingly, Plaintiff now
16 seeks to recover civil penalties and related relief through this representative action.

17 **II. JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
19 and the Aggrieved Employees, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved
22 Employees that solely arise under California law, rather than federal law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Los Angeles County pursuant to California Code of Civil
25 Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles County because at least some
26 of the transactions that are the subject matter of this Complaint occurred therein and/or because
27 each defendant is found, maintains offices, transacts business, and/or has an agent therein.
28



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

III. THE PARTIES

7. Plaintiff, an individual and resident of California, began working for Defendants as an hourly catering coordinator on or about July 27, 2019. On or about September 19, 2019, Defendants demoted Plaintiff to hourly line production associate. Plaintiff continuously worked in that capacity until Defendants denied an extension on her leave of absence for pregnancy, which resulted in her termination on October 6, 2020. She last performed her duties for Defendants on February 15, 2020. She began a leave of absence on that date and has not returned since. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050 and an “aggrieved employee” within the meaning of Labor Code § 2699(c).

8. Defendant MANNA DEVELOPMENT GROUP, LLC, is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

9. Defendant RISEN BREAD, LLC, is a limited liability company organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

10. 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.

A. THE AGGRIEVED EMPLOYEES

11. The “Aggrieved Employees” are all individuals currently and formerly employed by Defendants in California, as hourly, non-exempt employees, including, but not limited to catering coordinators, associates, and persons in comparable positions, at any time during the period of December 29, 2019 and entry of judgment (“the PAGA Period”).

12. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters 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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 other Defendants.

2 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
3 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
4 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
5 Employees in accordance with applicable California labor laws as alleged herein.

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

10 **IV. FACTUAL ALLEGATIONS**

11 15. Manna operates a Panera Bread franchise, including Panera Bread restaurants in
12 West Los Angeles and Encino.

13 16. On or about July 27, 2019, Defendants first employed Plaintiff to work at their
14 Panera Bread café, located at 16624 Ventura Boulevard in Encino, California, as an hourly
15 catering coordinator. On or about September 19, 2019, Defendants demoted Plaintiff to hourly
16 line production associate. Plaintiff continuously worked in that capacity until Defendants denied
17 an extension on her leave of absence for pregnancy, which resulted in her termination on October
18 6, 2020. She last performed her duties for Defendants on February 15, 2020. She began a leave
of absence on that date and has not returned since.

19 17. At all relevant times, Defendants paid Plaintiff and the Aggrieved Employees on
20 a bi-weekly basis at an hourly rate of pay. At all relevant times, Defendants classified Plaintiff
21 and the Aggrieved Employees as non-exempt employees entitled to the protections of both the
22 Labor Code and the Wage Order.

23 18. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
24 Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient
25 staff members, Plaintiff and the Aggrieved Employees were denied their 30-minute off-duty meal
26 period within the first five hours of work. When denied their timely meal periods, general
27 managers, such as Michelle Portillo, recorded 30-minute off-the-clock meal periods for Plaintiff
28 and the Aggrieved Employees though she required them to continue working. Defendants also
denied meal periods to Plaintiff and the Aggrieved Employees because there were insufficient



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 employees to cover for them during rest breaks and meal periods. Defendants also prohibited
2 Plaintiff and the Aggrieved Employees from taking meal periods or rest breaks between
3 12:00 p.m. and 2:30 p.m., even when employees exceeded five hours of work without a meal
4 period or rest break during that time.

5 19. Moreover, Defendants failed to authorize and permit Plaintiff and the Aggrieved
6 Employees to take 10-minute rest breaks every four hours worked or major fraction thereof as
7 required by the Wage Order. Defendants prohibited Plaintiff and the Aggrieved Employees from
8 taking rest breaks unless they received express authorization from their supervisor at the time the
9 break was sought. Defendants' supervisors withheld such authorization purportedly because
10 insufficient staff were present to perform the job duties of employees on break. Defendants even
11 denied Plaintiff's 10-minute rest breaks when she was eight-months pregnant. On those seldom
12 occasions Defendants permitted Plaintiff and the Aggrieved Employees to begin rest breaks,
13 managers interrupted them with demands that they clean, serve customers, and perform related
14 job duties. Moreover, Defendants advised Plaintiff and the Aggrieved Employees that their visits
15 to the restroom for periods of less than 10-minutes satisfied Defendants' obligation under
16 California law to provide them with rest breaks.

17 20. Defendants failed to hire sufficient staff members, including a second catering
18 coordinator, as promised at the beginning of Plaintiff's employment, to cover and support Plaintiff
19 and the Aggrieved Employees so they could take duty-free, 10-minute rest periods and duty-free,
20 30-minute meal periods. Furthermore, Defendants often failed to pay premium wages for days on
21 which they failed to provide Plaintiff and the Aggrieved Employees with timely meal periods.
22 Plaintiff complained to the district manager, Raquel Hernandez, about Defendants' meal and rest
23 periods violations. Defendants took no action to resolve her complaints.

24 21. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
25 to use their personal mobile phones to perform their job duties but did not reimburse them for
26 their mobile phone expenses, nor did they provide them with mobile phones as an alternative.
27 Defendants frequently contacted Plaintiff and the Aggrieved Employees on their personal mobile
28 phones, during and outside work hours, for catering orders, scheduling, customer outreach, and
other business-related matters.

22. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
to perform work while clocked-out and failed to compensate them for this time. Defendants



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 required Plaintiff and the Aggrieved Employees to coordinate catering schedules, speak with
2 clients, and have business-related calls with management all while clocked-out. Defendants failed
3 to compensate Plaintiff and the Aggrieved Employees for this work performed off-the-clock.

4 23. Defendants failed to issue Plaintiff and the Aggrieved Employees complete and
5 accurate wage statements as a result of their failure to state all hours worked at the correct rates
6 of pay, and all wages earned including rest and meal period premium wages. Defendants also
7 failed to timely pay Plaintiff and the Aggrieved Employees all earned wages described above
8 during and at the conclusion of employment. Moreover, Defendants failed to maintain accurate
employee records of Plaintiff and the Aggrieved Employees.

9 24. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
10 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 11 A. Not provided with all off duty meal periods;
- 12 B. Not provided with all rest break periods as required by law;
- 13 C. Not paid one hour's pay for each workday in which Defendants failed to
14 provide them with one or more timely rest periods;
- 15 D. Not paid one hour's pay for each workday in which Defendants failed to
16 provide them with one or more timely meal periods;
- 17 E. Not paid all wages earned, including, but not limited to, regular and
18 overtime wages for work performed while clocked out;
- 19 F. Not indemnified for all necessary business expenditures incurred during
the discharge of their duties;
- 20 G. Not provided with accurate and complete wage statements; and
- 21 H. Not timely paid all earned and unpaid wages during their employment with
22 Defendants and at the time such employment ended.

23 **V. FIRST (AND ONLY) CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698, et seq.)**

26 **(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against
all Defendants)**

- 27 25. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 28 26. At all relevant times, Plaintiff and the Aggrieved Employees have been non-



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

27. 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.

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

An employer shall 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 shall 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.

29. In relevant part, Section 12 of the Wage Order 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 of ten (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.”



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 30. In relevant part, Section 11 of the Wage Order states:

2 **Meal Periods**

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

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

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

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

28 (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.

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

33. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees 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.

34. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees 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.

35. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, Plaintiff and the Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. Defendants also denied meal periods to Plaintiff and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. Furthermore, Defendants often failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with timely meal periods.

36. Defendants also failed to authorize and permit Plaintiff and the Aggrieved Employees to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Defendants prohibited Plaintiff and the Aggrieved Employees from taking rest breaks unless they received express authorization from their supervisor at the time the break was sought. Defendants' supervisors withheld such authorization purportedly because insufficient staff were present to perform the job duties of employees on break. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

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

B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

38. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

suffered or permitted to work, whether or not required to do so.”

39. 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 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.

40. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

41. Labor Code section 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 section 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.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

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

6 44. Labor Code section 1198 makes it unlawful for an employer to employ an
7 employee under conditions that violate the Wage Order.

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

12 46. At all relevant times, at Defendants' direction, Plaintiff and the Aggrieved
13 Employees have worked off-the-clock without pay, including during periods clocked-out for
14 "meal periods," and after clocking-out at the end of their shifts. Such work included: delivering
15 orders, communicating with clients, scheduling catering, among others. Defendants, however,
16 failed to pay Plaintiff and the other Aggrieved Employees for this off-the-clock work.

17 47. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
19 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
20 required by California law.

21 **C. FAILURE TO INDEMNIFY**

22 48. In pertinent part, California Labor Code § 2802(a) states:

23 "An employer shall indemnify his or her employee[s] for all
24 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties."

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 50. At all relevant times, as a condition for employment, Defendants required Plaintiff
2 and the Aggrieved Employees to use their personal mobile phones for work-related activities
3 without reimbursing them for mobile phone expenses.

4 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
7 incurred during the course of performing their duties.

8 **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

9 52. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
10 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
11 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
12 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
13 each hourly rate by the employee.

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

19 A. The amount of the gross wages or net wages paid to the employee during
20 the pay period or any of the other information required to be provided on the itemized wage
21 statement pursuant to California Labor Code § 226(a);

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

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

27 D. The name of the employee and only the last four digits of his or his social
28 security number or an employee identification number other than a social security number; and

 E. The number of piece-rate units earned and the piece rate.

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



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 to other documents or information.

2 55. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved
3 Employees with all meal and rest periods in compliance with California law. They also failed to
4 provide them with premium wages on workdays they failed to provide them with one or more
5 meal and/or rest periods in compliance with California law. Further, Defendants failed to
6 compensate Plaintiff and the other Aggrieved Employees for all hours worked. As a result,
7 Defendants have failed to properly itemize Plaintiff and the other Aggrieved Employees' gross
8 and net wages earned, total hours worked, hourly rate of pay, the corresponding number of hours
9 worked at each hourly rate, and other requirements of California Labor Code § 226. Defendants
10 failed to state in the wage statements they issued to Plaintiff and the Aggrieved Employees all
11 their hours worked and wages earned, including, but not limited to, regular and overtime wages
12 for work they performed off-the-clock prior to clocking in at the beginning of their shifts (as
13 described above). As a result, Defendants have violated California Labor Code § 226.

14 56. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
17 provided wage statements that Defendants knew were not accurate.

18 57. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
20 accurate wage statements were violated and they were misled about the amount of wages they
21 had actually earned and were owed. In addition, the absence of accurate information on their wage
22 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
23 discovery and mathematical computations to determine the amounts of wages owed, has caused
24 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
25 submission of inaccurate information about wages to state and federal government agencies.
26 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
27 statements whether Defendants complied with their obligations under California Labor Code
28 section 226(a).

26 **E. UNTIMELY WAGES DURING EMPLOYMENT**

27 58. Labor Code § 204 states

28 (a) All wages, other than those mentioned in Section 201,



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

201.3, 202, 204.1, or 204.2, 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. ...

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

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub 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 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

59. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages for work performed off-the-clock. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 **F. UNTIMELY FINAL WAGES**

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

4 61. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at
7 least 72-hours notice before quitting are due and payable within 72 hours.

8 62. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

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

16 **G. CIVIL PENALTIES SOUGHT**

17 64. Labor Code § 204 states

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

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

(2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub 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



1 agreement that provides different pay arrangements, those arrangements shall
2 apply to the covered employees.

3 (d) The requirements of this section shall be deemed satisfied by the payment
4 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
more than seven calendar days following the close of the payroll period.

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

9 66. During the applicable time period, Defendants violated California Labor Code §§
10 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

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

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
19 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

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

23 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
24 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
25 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
26 each pay period for which the employee was underpaid (penalty amounts established by
27 California Labor Code § 558).

28 D. For violations of California Labor Code § 1197, one hundred dollars



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
3 (regardless of whether the initial violations were intentionally committed) (penalty amounts
4 established by California Labor Code § 1197.1).

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

10 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

11 69. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated December 29, 2020, Plaintiff gave written notice by certified
13 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
14 provisions of the California Labor Code alleged to have been violated, including the facts and
15 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
16 dated December 29, 2020 is attached hereto as Exhibit A. The LWDA has not responded to
17 Plaintiff’s letter.

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

21 **VI. PRAYER FOR RELIEF**

22 71. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
23 for relief and judgment against Defendants as follows:

- 24 A. Civil penalties;
- 25 B. Costs of suit;
- 26 C. Reasonable attorneys’ fees; and
- 27 D. Such other relief as the Court deems just and proper.

28 **VII. DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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

Respectfully submitted,

Dated: 03 / 05 / 2021

THE SPIVAK LAW FIRM



By

DAVID SPIVAK
MARALLE MESSRELIAN,
MAYA CHEAITANI, Attorneys for Plaintiff,
ERICA BROWN, and all others similarly
situated



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 29, 2020

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

Re: *Erica Brown / Manna Development Group, LLC*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Erica Brown (hereafter “Brown”) provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as hourly employees, including but not limited to catering coordinators, associates, and comparable employees (hereafter “Aggrieved Employees”), by Manna Development Group, LLC, a California limited liability company, and, Risen Bread, LLC, a California limited liability company (hereafter collectively referred to as “Manna”) , of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

At all relevant times, Manna has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Brown and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

Manna operates a Panera Bread franchise, including Panera Bread restaurants in West Los Angeles and Encino.

On or about July 17, 2019, Brown began working for Manna at its Panera Bread café located at 16624 Ventura Boulevard in Encino, California, as an hourly catering coordinator. On or about September 19, 2019, Manna demoted Brown to hourly line production associate. Brown continuously worked in that capacity until Manna denied an extension on her leave of absence for pregnancy, which resulted in her termination on October 6, 2020. She last performed her duties for Manna on February 15, 2020. She began a leave of absence on that date and has not returned since.

At all relevant times, Manna paid Brown and the other Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times, Manna classified Brown and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Manna failed to provide Brown and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, Brown and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. When denied their timely meal periods, general managers such as Michelle Portillo recorded 30-minute off-the-clock meal periods for Brown and the Aggrieved Employees though she required them to continue working. Manna also denied meal periods to Brown and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. Manna also prohibited Brown and the Aggrieved Employees from taking meal periods or rest breaks between 12:00 p.m. and 2:30 p.m. even when employees exceeded five hours of work without a meal period or rest break during that time.

Moreover, Manna failed to authorize and permit Brown and the Aggrieved Employees to take ten-minute rest breaks every four hours worked or major

fraction thereof as required by the Wage Order. Manna prohibited Brown and the Aggrieved Employees from taking rest breaks unless they received express authorization from their supervisor at the time the break was sought. Manna supervisors withheld such authorization purportedly because insufficient staff were present to perform the job duties of employees on break. Manna even denied Brown's ten-minute rest breaks when she was eight months pregnant. On those seldom occasions Manna permitted Brown and the Aggrieved Employees to begin rest breaks, managers interrupted them with demands that they clean, serve customers, and perform related job duties. Moreover, Manna advised Brown and the Aggrieved Employees that their visits to the restroom for periods of less than ten minutes satisfied Manna's obligation under California law to provide them with rest breaks.

Manna failed to hire sufficient staff members, including a second catering coordinator, as promised at the beginning of Brown's employment, to cover and support Brown and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, Manna often failed to pay premium wages for days on which it failed to provide Brown and the other Aggrieved Employees with timely meal period. Manna also failed to pay premium wages for days on which it failed to provide Brown and the other Aggrieved Employees with timely rest periods. Brown complained to the district manager, Raquel Hernandez, about Manna's meal and rest period violations. Manna took no action to resolve her complaints.

At all relevant times, Manna required Brown and the Aggrieved Employees to use their personal mobile phones 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. Manna frequently contacted Brown and the Aggrieved Employees on their personal mobile phones, during and outside work hours, for catering orders, scheduling, customer outreach, and other Manna business.

At all relevant times, Manna required Brown and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. Manna required Brown and the Aggrieved Employees to coordinate catering

schedules, speak with clients, and have business-related calls with management, all while clocked out. Manna failed to compensate Brown and the Aggrieved Employees for this work performed off-the-clock.

Manna failed to issue to Brown 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. Manna also failed to timely pay Brown and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Manna failed to maintain accurate employee records of Brown and the Aggrieved Employees.

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

- (a) Manna failed to pay Brown and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;
- (b) Manna failed to provide Brown and the Aggrieved Employees all meal periods and rest periods in compliance with California law;
- (c) Manna failed to compensate Brown and the Aggrieved Employees at one hour's pay for each day in which Manna failed to provide them with their rest breaks as required by law;
- (d) Manna failed to compensate Brown and the Aggrieved at one hour's pay for each day in which it failed to provide them with their meal periods as required by law;
- (e) Manna failed to indemnify Brown and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (f) Manna failed to provide Brown and the other Aggrieved Employees with accurate wage statements; and
- (g) Manna failed to timely pay Brown and the other Aggrieved Employees all earned and unpaid wages during their employment with Manna.

Accordingly, Brown now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Manna'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," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, Manna operated restaurants. Accordingly, Brown and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

///

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 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, Labor Code section 1194 states:

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

In relevant part, Labor Code section 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.

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

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 in a workweek unless the employee receives one and one half (1½) 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 (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including

twelve (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; and
- (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.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times, at Manna's direction, Brown and the Aggrieved Employees have worked off the clock without pay, including during periods clocked out for "meal periods," and after clocking out at the end of their shifts. Such work included: delivering orders, communicating with clients, scheduling catering, among others.

Accordingly, Brown now seeks civil penalties on behalf of herself and the 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 in addition

to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

2. \$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
3. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).
4. \$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 Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

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, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 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 the Wage Order 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. . . .
- (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.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery 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 or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

At all relevant times, Manna failed to provide Brown and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, Brown and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. Manna also denied meal periods to Brown and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. Furthermore, Manna often failed to pay premium wages for days on which it failed to provide Brown and the other Aggrieved Employees with timely meal periods.

Accordingly, Brown now seeks civil penalties for these Labor Code violations that Manna has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code section 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$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 Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

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, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

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 of ten (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 ½) 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 workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery 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 or rest or recovery 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 workday that the meal or rest or recovery period is not provided.

Manna failed to authorize and permit Brown and the Aggrieved Employees to take ten-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Manna prohibited Brown and the Aggrieved Employees from taking rest breaks unless they received express authorization from their supervisor at the time the break was sought. Manna supervisors withheld such authorization purportedly because insufficient staff were present to perform the job duties of employees on break. Moreover, Manna failed to pay Brown and the Aggrieved Employees premium wages on workdays it failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

Accordingly, Brown now seeks civil penalties for these Labor Code violations that Manna has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, 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 Reimburse 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.

As described above, during the applicable limitations period, Manna required Brown and the other Aggrieved Employees to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Brown seeks civil penalties for these Labor Code violations that Manna has committed against her 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 Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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 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.

At all relevant times during the applicable limitations period, Manna 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. Manna failed to state in the wage statements it issued to Brown 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).

Manna's violation was knowing and intentional. Brown and the Aggrieved Employees often complained about Manna's Labor Code violations to the district manager, Raquel Hernandez. Brown and the Aggrieved Employees notified Manna that it failed to provide them with duty-free meal and rest periods. Manna ignored their complaints.

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

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 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.

Manna failed to pay Brown and the other Aggrieved Employees for work performed after they clocked out. Manna failed to provide Brown and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Manna also failed to provide Brown 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, Manna 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, Brown now seeks civil penalties for the Labor Code violations that Manna has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each

subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 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 72 hours thereafter, unless the employee has given 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 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

Manna failed to pay Brown and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Brown. By failing to pay Brown and the Aggrieved Employees as set forth above by such time, Manna is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Brown seeks civil penalties from Manna as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in

which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 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.

Labor Code section 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).

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 section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

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

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

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); 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)).

///

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(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,



David Spivak, Esq.

David@spivaklaw.com

cc: Erica Brown
Walter Haines, Esq.

Manna Development Group, LLC
c/o Agent for Service of Process
Jennifer Carosella
2339 11th Street
Encinitas, CA 92024

Risen Bread, LLC
c/o Agent for Service of Process
Deanna Taylor
2339 11th Street
Encinitas, CA 92024