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

MAR 03 2021

BY 
EDUARDO HERNANDEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

vs.

COAST TO COAST COMMERCIAL, LLC
dba SONIC DRIVE-IN, a California
Limited Liability Company; and DOES 1
through 10, inclusive,

Defendants.

Case No.:

CIV SB 2105311

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

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

Jury Trial Demanded

BY FAX

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

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”), to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 persons who are or were employed by Defendant Coast to Coast Commercial, LLC dba Sonic
8 Drive-In, a California limited liability company; and DOES 1 through 10, inclusive
9 (collectively “Defendants”) in California as non-exempt, hourly-paid employees and against
10 whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor
11 Code or any provision regulating hours and days of work in the applicable Industrial Welfare
12 Commission (“IWC”) Wage Order were committed, as set forth in this complaint (“Aggrieved
13 Employees”), at any time between one year before Plaintiff’s submission of the LWDA Notice
14 (defined below) in advance of Plaintiff’s filing of this complaint (in addition to all days the
15 period was stayed or tolled) until judgment

16 2. The civil penalties and other relief sought by Plaintiff exceed the minimum
17 jurisdiction limits of the Superior Court and will be established according to proof at trial.
18 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

19 3. This Court has jurisdiction over this action pursuant to the California
20 Constitution, Article VI, section 10. The statute under which this action is brought does not
21 specify any other basis for jurisdiction.

22 4. This Court has jurisdiction over all Defendants because Defendants are either
23 citizens of California, have sufficient minimum contacts in California, or otherwise
24 intentionally avail themselves of the California market so as to render the exercise of
25 jurisdiction over them by the California courts consistent with traditional notions of fair play
26 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
27 that the State of California, the real party in interest, is not a “citizen” for purposes of
28 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.

1 Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for
2 purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated
3 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
4 action. *Id.* at 1122.

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

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

11 **THE PARTIES**

12 7. Plaintiff is a resident of Victorville, California. Defendants employed Plaintiff
13 from approximately October 2019 until approximately July 2, 2020 as an hourly-paid assistant
14 manager, first at Defendants’ Beaumont, California restaurant and then at Defendants’ Rialto,
15 California location.

16 8. As a non-exempt, hourly-paid employee, Plaintiff typically worked 8:30 a.m.
17 until 4:30 p.m., at least five days per week. Plaintiff’s job duties included supervising food
18 preparation, sales, inventory, cleaning, customer support, assisting in any managerial tasks
19 assigned to her, as well as performing the duties of those that she worked with whenever the
20 need arose for her to provide this support.

21 9. Plaintiff is informed and believes, and thereon alleges, that Defendant Coast to
22 Coast Commercial, LLC dba Sonic Drive-In, is a California limited liability company that is
23 doing business in the state of California. Plaintiff is informed and believes, and thereon further
24 alleges that at all times hereinafter mentioned, Defendant Coast to Coast Commercial, LLC
25 dba Sonic Drive-In is an employer whose employees are engaged throughout the State of
26 California.

27 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
28 herein under the fictitious names DOES 1 through 10 and will seek leave of this Court to

1 amend the complaint and serve such fictitiously named defendants once their names and
2 capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES
3 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the
4 other named Defendants, and that each and all of the acts and omissions alleged herein were
5 performed by, or are attributable to, Defendants each acting as the agent, employee, alter ego,
6 joint employer, and/or joint venturer of, or working in concert with, each of the other co-
7 Defendants and was acting within the course and scope of such agency, employment, joint
8 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
9 and all Defendants were in accordance with, and represent, the official policy of Defendants.

10 11. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages and violations herein alleged.

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

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 13. Plaintiff is informed and believes, and thereon alleges, that Defendants are
19 limited liability companies, corporations and/or general partnerships that prepare and provide
20 food to consumers across California.

21 14. Upon information and belief, Defendants maintain a centralized Human
22 Resources department in California, for all Aggrieved Employees, including Plaintiff. At all
23 relevant times, Defendants issued and maintained uniform, standardized practices and
24 procedures for all non-exempt, hourly-paid employees, including Plaintiff and Aggrieved
25 Employees, regardless of their location or position.

26 15. Upon information and belief, Defendants process payroll for all Aggrieved
27 Employees working for Defendants in California. Further, Defendants issue the same uniform
28 and formatted wage statements to all non-exempt, hourly-paid employees in California,

1 irrespective of their work location, position, or manner in which each employee's employment
2 ended. In other words, Defendants utilized the same methods and formulas when calculating
3 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

4 16. Defendants continue to employ non-exempt, hourly-paid employees.

5 17. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
7 and advisors knowledgeable about California labor and wage law, employment and personnel
8 practices, and about the requirements of California law.

9 18. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
10 Aggrieved Employees were not fully compensated because, among other reasons, all hours
11 worked may not have been recorded and because Defendants did not always pay for all hours
12 worked.

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

17 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
19 minimum wages for all hours worked. In violation of the California Labor Code and
20 applicable IWC Wage Order, Plaintiff and Aggrieved Employees were not paid at least
21 minimum wages for all work performed.

22 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
24 accordance with the Labor Code and applicable IWC Wage Order; that Plaintiff and
25 Aggrieved Employees were entitled to payment of one additional hour of pay at their regular
26 rates of compensation when they were not provided with timely, uninterrupted, thirty-minute
27 meal periods; and that Plaintiff and Aggrieved Employees were not provided with all meal
28 periods nor payment of one additional hour of pay at their regular rates of compensation when

they were not provided a timely, uninterrupted, thirty-minute meal period.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to payment of one additional hour of pay at their regular rates of compensation when they were not provided with a compliant rest period, and that Plaintiff and Aggrieved Employees were not provided compliant rest periods nor payment of one additional hour of pay at their regular rates of compensation when they were not provided a compliant rest period.

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

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

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

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

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to timely payment

1 of all wages earned upon termination of employment. In violation of the California Labor
2 Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due,
3 including, but not limited to, overtime wages, minimum wages, meal period and rest period
4 premium wages, and reporting time pay within permissible time periods.

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

10 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that Plaintiff and Aggrieved Employees
12 are entitled to no less than two hours of pay, but not more than four hours, at the employee's
13 regular rate of pay when they are required to report for work, but are not put to work or work
14 less than half the usual or scheduled shift. Plaintiff is informed and believes, and thereon
15 alleges, that in violation of the California Labor Code and the applicable IWC Wage Order,
16 Plaintiff and Aggrieved Employees did not receive reporting time pay as required.

17 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Aggrieved Employees were entitled to suitable seating
19 and/or were entitled to sit when it did not interfere with the performance of their duties.

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

26 32. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for

1 violations of the California Labor Code and applicable IWC Wage Order may, as an
2 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
3 themselves and other current or former employees pursuant to procedures outlined in
4 California Labor Code section 2699.3.

5 33. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the
7 alleged violations was committed.”

8 34. Plaintiff and other current and former non-exempt, hourly-paid employees of
9 Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they
10 are all Defendants’ current or former employees and one or more of the alleged violations
11 were committed against them.

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

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

notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give (a) written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

37. On or about December 28, 2020, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendant Coast to Coast Commercial, LLC dba Sonic Drive-In of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendant Coast to Coast Commercial, LLC dated December
2 28, 2020, is attached as Exhibit 1.

3 38. As of the filing of this complaint, over sixty-five days have passed since
4 Plaintiff sent the written notice described above to the LWDA, and the LWDA has not
5 responded that it intends to investigate Plaintiff's claims and Defendants have not cured the
6 violations.

7 39. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
9 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
10 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, and
11 2802 as well as all applicable IWC Wage Orders.

12 40. Defendants, at all times relevant to this complaint, were employers or persons
13 acting on behalf of an employer(s) who violated Plaintiff's and Aggrieved Employees' rights
14 by violating various sections of the California Labor Code as set forth above.

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

18 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
19 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
20 general, seeks assessment and collection of civil penalties for herself, all Aggrieved
21 Employees, and the State of California against Defendants, in addition to other remedies, for
22 violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510,
23 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802, as well as all applicable
24 IWC Wage Orders.

25 **FIRST CAUSE OF ACTION**

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

27 **(Against all Defendants)**

28 43. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 44. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223,
5 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Labor Code
6 section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties
7 for violations of those Labor Code sections not found in section 2699.5, including section
8 1182.12.

9 45. Defendants' conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
12 Wage Order for Defendants' failure to compensate Plaintiff and
13 Aggrieved Employees with all required overtime pay, as set forth
14 below;
- 15 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and
16 1197.1, and the applicable IWC Wage Order for Defendants' failure to
17 compensate Plaintiff and Aggrieved Employees with at least minimum
18 wages for all hours worked, as set forth below;
- 19 (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the
20 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
21 and Aggrieved Employees with meal periods, as set forth below;
- 22 (d) Violation of Labor Code sections 226.7 and 1198, and the applicable
23 IWC Wage Order for Defendants' failure to provide Plaintiff and
24 Aggrieved Employees with rest periods, as set forth below;
- 25 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
26 IWC Wage Order for failure to provide accurate and complete wage
27 statements to Plaintiff and Aggrieved Employees, as set forth below;
- 28 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable

IWC Wage Order for failure to maintain accurate payroll records, as set forth below;

- (g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (h) Violation of Labor Code section 204 for failure to timely pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code sections 201, 202, and 203 for failure to timely pay all earned wages upon termination, as set forth below;
- (j) Violations of Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for all business expenditures and/or losses necessarily incurred, as set forth below;
- (k) Violation of Labor Code section 1198 and section 5 of the applicable IWC Wage Order for failing to pay reporting time payments to Plaintiff and Aggrieved Employees, as set forth more fully below; and
- (l) Violation of Labor Code section 1198 and section 14 of the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and Aggrieved Employees, as set forth more fully below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

46. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

1 number of hours worked by the person on a daily or weekly basis.

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

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

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

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

19 52. Defendants failed to pay all overtime wages owed to non-exempt, hourly-paid
20 Aggrieved Employees. During the relevant time period, non-exempt, hourly-paid Aggrieved
21 Employees were not paid overtime premiums for all of the hours they worked in excess of
22 eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week,
23 and/or for the seventh consecutive day of work, sometimes because all hours that they worked
24 were not recorded, and other times because they were simply not paid for all hours that were
25 recorded and/or worked. As a result, Plaintiff believes the hours non-exempt, hourly-paid
26 Aggrieved Employees worked may not have been properly recorded and/or paid, and
27 therefore, non-exempt, hourly-paid Aggrieved Employees also may not have been properly
28 compensated for all hours that were recorded and/or worked.

1 53. On information and belief, Defendants have a company-wide policy and/or
2 practice of staffing their restaurants based upon labor budgets set by the corporate office
3 and/or upper management. The labor budgets included maximum number of labor hours to be
4 used based on revenue generated by the restaurants. Defendants' use of labor budgets resulted
5 in chronic understaffing, such that there were too few employees on duty to handle the
6 workload and provide uninterrupted meal periods. As a result of Defendants' systemic
7 utilization of labor budgets and preference for profitability over compliance with labor laws,
8 Plaintiff and Aggrieved Employees were not provided adequate meal period coverage to allow
9 them to be relieved of their duties for compliant meal periods. This would result in Plaintiff
10 and Aggrieved Employees working while off-the-clock during meal periods and/or after their
11 scheduled shifts.

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

19 55. Defendants knew or should have known that, as a result of their policies,
20 practices and/or procedures, Plaintiff and Aggrieved Employees were at times performing
21 their assigned duties off-the-clock, were subject to control of Defendants, and/or were
22 suffered or permitted to perform work for which they were not paid. Defendants also knew, or
23 should have known, that they did not compensate Plaintiff and Aggrieved Employees for off-
24 the-clock work, or all hours worked. Because Plaintiff and Aggrieved Employees sometimes
25 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
26 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At
27 other times, Defendants simply did not pay for all the hours that were recorded. Therefore,
28 Plaintiff and Aggrieved Employees were not paid overtime wages for all of the overtime hours

1 they actually worked.

2 56. Defendants knew or should have known that, as a result of their policies and/or
3 practices, Plaintiff and Aggrieved Employees were performing work for which Plaintiff and
4 Aggrieved Employees were not paid. Defendants also knew, or should have known, that they
5 did not compensate Plaintiff and Aggrieved Employees for all hours worked. Because Plaintiff
6 and Aggrieved Employees sometimes worked shifts of eight hours a day or more and forty
7 hours a week or more, some of this work performed before and/or after shifts qualified for
8 overtime premium pay. Therefore, Plaintiff and Aggrieved Employees were not paid overtime
9 wages for all of the overtime hours they actually worked.

10 57. Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
11 compensation owed, as required by California law, violates the provisions of California Labor
12 Code sections 510 and 1198. Plaintiff and Aggrieved Employees are entitled to recover civil
13 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 558, 1194 and/or
14 2699(a), (f), and (g).

15 **FAILURE TO PAY MINIMUM WAGES**
16 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, AND 1198 AND**
17 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 4**

18 58. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
19 and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum
20 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is
21 unlawful. Compensable work time defined in Wage Order No. 5 as "the time during which an
22 employee is subject to the control of an employer, and includes all the time the employee is
23 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, §
24 11050(2)(K) (defining "Hours Worked").

25 59. As set forth above, Plaintiff is informed and believes, and thereon alleges, that
26 Defendants' policy and/or practice of staffing their locations based on labor budgets set by the
27 corporate office resulted in chronic understaffing, causing a lack of meal period coverage and
28 leading employees to perform off-the-clock work during their meal periods. Moreover,

Defendants' policy or practice of communicating with employees regarding work-related matters, as well as directing employees to continue working and/or return to work during meal periods, and when those employees are otherwise clocked out, resulted in employees performing unpaid work. Moreover, Defendant's policy or practice of refusing employees the opportunity to take meal periods in any location of their choosing, including within the restaurant amongst the tables and seating provided for customers, resulted in employees remaining under the control of Defendants throughout their meal periods. Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff and other Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods.

60. Defendants systematically did not pay Plaintiff and Aggrieved Employees all hours worked. To the extent that these unpaid hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked in violation of California Labor Code sections 223, 1182.12, 1194, 1197, and 1198. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1194, 1197.1, and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 11

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

62. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and

1 the employee. Under California law, first meal periods must start after no more than five
2 hours. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

16 65. As stated above, at all relevant times Defendants had, and continue to have, a
17 company-wide policy and/or practice of understaffing their restaurants which resulted in a
18 lack of break coverage and prevented Plaintiff and Aggrieved Employees from taking all
19 timely, uninterrupted meal periods, including second meal periods, to which they were
20 entitled. Plaintiff and Aggrieved Employees had to work through many of their meal periods,
21 have their meal periods interrupted to return to work, and/or wait until after they had already
22 worked five hours before taking meal periods in order to adhere to this labor budget and/or
23 understaffed shifts.

24 66. Additionally, for the same reason, Defendants did not provide Plaintiff and
25 Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours
26 and who did not waive their legally-mandated meal periods by mutual consent to take a
27 second uninterrupted meal period of not less than thirty minutes.

28 67. At all times herein mentioned, Defendants knew or should have known that, as

1 a result of their practices and policies, Plaintiff and Aggrieved Employees have been required
2 to perform some of their assigned duties during meal periods and that Defendants did not pay
3 Plaintiff and Aggrieved Employees meal period premium wages when meal periods were late,
4 interrupted, and/or missed. As a result, Plaintiff and Aggrieved Employees had to work
5 through some or all of their meal periods, had their meal periods interrupted to return to work,
6 and/or waited extended periods of time before taking meal periods. Plaintiff and Aggrieved
7 Employees were made to work over five hours before Defendants permitted and authorized
8 them to take their meal periods, and their meal periods were cut short and/or taken late so that
9 Plaintiff and Aggrieved Employees could attend to their assigned tasks.

10 68. Moreover, upon information and belief, Defendants engaged in a systematic,
11 company-wide practice and/or policy of not properly training Plaintiff and Aggrieved
12 Employees on their entitlement to meal period premium payments from meal period
13 violations. As a result, Defendants failed to provide Plaintiff and Aggrieved Employees with
14 compliant meal periods in violation of California Labor Code sections 226.7 and 512(a) and
15 failed to pay the full meal period premiums due. Alternatively, to the extent that Defendants
16 did pay meal period premium wages to Plaintiff and Aggrieved Employees, such payments
17 were admissions of Defendants' failure to provide meal periods.

18 69. Defendants' conduct violates California Labor Code sections 226.7, 512(a), and
19 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore
20 entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, as well as unpaid
21 wages, pursuant to Sections 226.7, 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE REST PERIODS IN**
23 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
24 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 12**

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

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

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

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

17 73. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three
18 and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all
19 uninterrupted ten-minute rest periods to which they were entitled.

20 74. Upon information and belief, during the relevant time period, Defendants’
21 company-wide policy and practice of understaffing their restaurants resulted in a lack of break
22 coverage, which prevented Aggrieved Employees from being relieved of all duty in order to
23 take compliant rest periods. Moreover, Defendants’ company-wide policy and/or practice of
24 requiring its employees remain on premises during their rest periods, but not providing
25 suitable resting facilities further prevented Plaintiff and Aggrieved Employees from being
26 relieved of their duties during rest periods.

27 75. Upon information and belief, Defendants have also engaged in a systematic,
28 company-wide practice and/or policy of not paying rest period premiums owed when rest

1 periods are not provided. Thus, Defendants denied Plaintiff and Aggrieved Employees rest
2 periods and failed to pay them rest period premium wages due, in violation of Labor Code
3 section 226.7 and the applicable IWC Wage Order.

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

7 77. Defendants' conduct violates California Labor Code sections 226.7 and 1198
8 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled
9 to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 226.7,
10 2699(a), (f), and (g).

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

13 78. At all relevant times herein set forth, California Labor Code section 226(a)
14 provides that every employer shall furnish each of his or her employees an accurate and
15 complete itemized wage statement in writing, including, but not limited to, the name and
16 address of the legal entity that is the employer, the inclusive dates of the pay period, total
17 hours worked, and all applicable rates of pay.

18 79. Labor Code section 226(a) requires employers to make, keep and furnish true,
19 accurate, and complete employment records. Defendants have not provided Plaintiff and other
20 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
21 employee may seek civil penalties under Labor Code section 2699 for violations of wage
22 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
23 15 Cal.App.5th 773, 788 (2017). ("a plaintiff seeking civil penalties under PAGA for a violation
24 of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional'
25 requirements of section 226(e)(1).") Rather, Labor Code section 226.3 provides that any
26 employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250
27 per employee per violation in an initial citation and \$1,000 per employee for each violation in a
28 subsequent citation, for which the employer fails to provide the employee a wage statement or

1 fails to keep the required records pursuant to Section 226(a).

2 80. Defendants have not provided Plaintiff and Aggrieved Employees with
3 properly itemized wage statements. Moreover, an aggrieved employee may seek civil
4 penalties under Labor Code section 2699 for violations of wage statement requirements
5 without the need to establish injury.

6 81. Further, Labor Code section 226.3 provides that any employer who violates
7 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per
8 violation in an initial citation and \$1,000 per employee for each violation in a subsequent
9 citation, for which the employer fails to provide the employee a wage statement or fails to
10 keep the required records pursuant to Section 226(a).

11 82. Defendants have provided Plaintiff and Aggrieved Employees with incomplete
12 and inaccurate wage statements. Defendants failed to provide accurate wage statements for
13 Plaintiff and Aggrieved Employees showing, among other things, gross wages earned, total
14 hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and
15 the corresponding number of hours worked at each hourly rate, and/or failing to state all hours
16 worked as a result of not recording or stating all the hours that Plaintiff and Aggrieved Employees
17 worked off-the-clock.

18 83. Because Defendants failed to provide, among other things, the accurate number
19 of total hours worked, as well as gross wages earned, and net wages earned on wage
20 statements, Plaintiff and Aggrieved Employees have been prevented from verifying, solely
21 from information on the wage statements themselves, that they were paid correctly and in full.
22 Instead, Plaintiff and Aggrieved Employees have had to look to sources outside of the wage
23 statements themselves and reconstruct time records to determine whether in fact they were
24 paid correctly and the extent of underpayment, thereby causing them injury.

25 84. Plaintiff and Aggrieved Employees are therefore entitled to recover penalties,
26 attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or 2699(a), (f),
27 and (g).
28

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

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

86. During the relevant time period, and in violation of Labor Code section 1174(d), Defendants failed to maintain accurate payroll records for Plaintiff and Aggrieved Employees showing the accurate daily hours worked and the wages paid as well as failing to correctly list the gross wages and net wages earned by them.

87. Defendants’ conduct violates California Labor Code sections 1174(d) and 1198 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Sections 1174.5 and/or 2699(a), (f), and (g).

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

88. At all times relevant herein set forth, California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant

1 to the applicable IWC Wage Order, employers are required to keep accurate time records
2 showing when the employee begins and ends each work period and meal period. Cal. Code
3 Regs. Tit. 8, § 11050(7)(A).

4 89. During the relevant time period, Defendants failed, on a company-wide basis,
5 to keep accurate records of hours worked for Plaintiff and Aggrieved Employees, in violation
6 of Section 1198 and the applicable IWC Wage Order.

7 90. Because Defendants failed to provide, among other things, the accurate number
8 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
9 effect during the pay period and the corresponding number of hours worked on wage statements,
10 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
11 information on the wage statements themselves, that they were paid correctly and in full and
12 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
13 other Aggrieved Employees have had to look to sources outside of the wage statements
14 themselves and reconstruct time records to determine whether in fact they were paid correctly
15 and the extent of underpayment.

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

19 **FAILURE TO PAY WAGES DURING EMPLOYMENT IN**
20 **VIOLATION OF LABOR CODE SECTION 204**

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

26 93. At all times relevant herein, Labor Code section 204 provides that all wages
27 earned by any person in any employment between the sixteenth and the last day, inclusive, of
28 any calendar month, other than those wages due upon termination of an employee, are due and

1 payable between the first and the tenth day of the following month.

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

8 95. At all relevant times herein, Defendants failed to pay Plaintiff and Aggrieved
9 Employees all wages due including, but not limited to, overtime wages, minimum wages,
10 meal and rest period premium wages, and reporting time pay, within the time periods
11 specified by Labor Code section 204.

12 96. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
13 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or
14 2699(a), (f), and (g).

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

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

24 98. During the relevant time period, on information and belief, Defendants failed to
25 pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all their
26 earned wages at the time of discharge or within seventy-two hours of their leaving
27 Defendants' employ, including but not limited to, overtime wages, minimum wages, and
28 reporting time pay, either at the time of discharge or within seventy-two hours of their leaving

Defendants' employment.

99. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two hours of their leaving Defendants' employment, violates Labor Code sections 201 and 202. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN
VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 9**

100. At all times herein set forth, California Labor Code sections 2800 and 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code sections 2800 and 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

101. The applicable IWC Wage Order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." Cal. Code Regs. tit. 8 § 11050, subd. 9.

102. During the relevant time period, Plaintiff and Aggrieved Employees were required to utilize their own personal cell phones to carry out their job duties. Plaintiff and Aggrieved Employees were required to use their own personal phones to contact each other when work-related matters arose, such as communicating work schedules to employees. Although Defendants required Plaintiff and Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, Defendants did not reimburse them for this expense.

Defendants could have provided Plaintiff and Aggrieved Employees with the actual tools and materials required for use on the job, including adequate internet and company phones, but instead, Defendants passed this operating cost off onto Plaintiff and other Aggrieved Employees.

103. Defendants' policy, practice, and/or procedure of passing its operating costs on to Plaintiff and Aggrieved Employees violates Labor Code sections 2800 and 2802. Plaintiff and Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE REPORTING TIME PAY

**VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 5**

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

105. The applicable IWC Wage Order and California Code of Regulations, Title 8, section 11050(5)(A), provides that:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

106. Upon information and belief, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because they failed to pay Plaintiff and Aggrieved Employees reporting time pay when they reported for work and were immediately dismissed or put to work for less than half their usual or scheduled shift.

107. For instances, on some occasions, Plaintiff had reported to work based on the schedule that Defendants provided to her only to be sent home immediately or be sent home

1 before having worked less than half of her scheduled shift because business was slow. When
2 this occurred, Defendants did not pay Plaintiff and Aggrieved Employees for at least half of
3 their scheduled hours. As a result, Plaintiff and Aggrieved Employees were not properly
4 compensated with reporting time pay in violation of California Labor Code section 1198.

5 108. Accordingly, Plaintiff and Aggrieved Employees are therefore entitled to
6 recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section
7 2699(a), (f), and (g) for any violations of Labor Code section 1198 and California Code of
8 Regulations, Title 8, section 11050(5).

9 **FAILURE TO PROVIDE SEATING**

10 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA**
11 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 14**

12 109. California Labor Code section 1198 provides that no employer may employ an
13 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
14 California Labor Code section 1198 further requires that ". . . the standard conditions of labor
15 fixed by the commission shall be the . . . standard conditions of labor for employees. The
16 employment of any employee . . . under conditions of labor prohibited by the order is
17 unlawful." The suitable seating requirement is a standard condition of labor for employees.
18 *Bright v. 99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

19 110. The applicable IWC Wage Order provides that "[a]ll working employees shall
20 be provided with suitable seats when the nature of the work reasonably permits the use of
21 seats. When employees are not engaged in the active duties of their employment and the
22 nature of the work requires standing, an adequate number of suitable seats shall be placed in
23 reasonable proximity to the work area and employees shall be permitted to use such seats
24 when it does not interfere with the performance of their duties." Cal. Code Regs. tit. 8 §
25 11050, subd. 14.

26 111. Plaintiff and Aggrieved Employees were routinely denied suitable seating
27 within the meaning of the California Labor Code. Although Plaintiff and Aggrieved
28 Employees were able to perform tasks such as cashiering or assisting customers, Defendants

1 refused to provide seats. On some occasions, Defendants failed to provide suitable seating for
2 workers who could have performed their duties.

3 112. Defendants violated California Labor Code section 1198 and the applicable
4 IWC Wage Order because Plaintiff and Aggrieved Employees were not permitted to sit, even
5 if they were not engaged in active duties. They were not permitted to sit, even when it would
6 not interfere with the performance of their duties, nor were they provided with suitable seats.

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

10 **REQUEST FOR JURY TRIAL**

11 Plaintiff requests a trial by jury.

12 **PRAYER FOR RELIEF**

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

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

18 **As to the First Cause of Action**

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510
21 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1,
22 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and
23 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest
24 periods); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198
25 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate
26 and complete payroll records); 1198 and California Code of Regulations, Title 8, section
27 11050(7) (by failing to maintain accurate and complete time records); 204 (by failing timely
28 to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all

1 earned wages upon termination); 2800 and 2802 (by failing to reimburse employees for
2 business expenses necessarily incurred); 1198 and California Code of Regulations, Title 8,
3 section 11050(5) (by failing to pay reporting time pay); and 1198 and California Code of
4 Regulations, Title 8, section 11050(14) (by failing to provide suitable seating).

5 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558,
6 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
7 sections 201, 202, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197,
8 1197.1, 1198, 2800, and 2802, as well as all applicable IWC Wage Orders;

9 4. For attorneys' fees and costs pursuant to California Labor Code sections
10 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of
11 California Labor Code sections 201, 202, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d),
12 1182.12, 1194, 1197, 1197.1, 1198, 2800, and 2802, as well as all applicable IWC Wage
13 Orders;

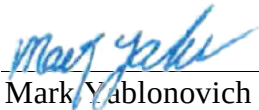
14 5. For pre-judgment and post-judgment interest as provided by law; and

15 6. For such other and further relief as the Court may deem equitable and
16 appropriate.

17
18 Dated: March 3, 2021

Respectfully submitted,

19 LAW OFFICES OF MARK YABLONOVICH

20
21 By: 
22 Mark Yablonoich

23 Attorneys for Plaintiff Martha Mejia
24
25
26
27
28

EXHIBIT 1

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

December 28, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Martha Mejia v. Coast to Coast Commercial LLC, dba Sonic Drive-In*

Dear PAGA Administrator:

This law firm represents Martha Mejia (“Ms. Mejia”) in connection with her claims under the California Labor Code against her former employer Coast to Coast Commercial, Inc., dba Sonic Drive-In (“Sonic”).

The employer may be contacted directly:

COAST TO COAST COMMERCIAL, LLC
26400 La Alameda, Suite 100
Mission Viejo, CA 92691

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

Sonic employed Ms. Mejia from approximately October 2019 to approximately July 2, 2020, as an hourly-paid assistant manager, first at a Sonic restaurant in Beaumont, California and then at a Sonic restaurant in Rialto, California. Ms. Mejia typically worked Monday through Friday, from 8:30 a.m. to 4:30 p.m. Her job duties included supervising food preparation, sales, inventory, cleaning, customer support, assisting in any managerial tasks assigned to her, as well as performing the duties of those that she supervised whenever the need arose for her to provide this support.

Sonic committed one or more of the following Labor Code violations against Ms. Mejia and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved

Re: *Mejia v. Coast to Coast Commerical, LLC*
December 28, 2020
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employee” pursuant to California Labor Code section 2699(c):¹

Sonic’s Company-Wide and Uniform Payroll and Human Resources Practices

Sonic is a California limited liability company that owns and operates numerous brands and restaurants nationwide, including in California. Upon information and belief, Sonic maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for Sonic, including Ms. Mejia and other Aggrieved Employees. At all relevant times, Sonic issued and maintained uniform, standardized policies, practices, and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Mejia and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, Sonic maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for Sonic in California, including Ms. Mejia and other Aggrieved Employees. Further, Sonic issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. Sonic’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, Sonic utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Mejia and other Aggrieved Employees in California.

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

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

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

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for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

On information and belief, Sonic has a company-wide policy and/or practice of staffing its restaurants based on a labor budget set by the corporate office. Sonic's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal periods. Additionally, Sonic's staffing policy and/or practice resulted in only one manager on duty each shift. Since only managers had access to certain secured rooms, this meant that any time an employee needed something from a secured room (e.g. supplies), Ms. Mejia and other managers would be required to provide assistance. This limitation also extended to the access of the store safe, which only Ms. Mejia and other managers knew the code for. If an employee needed something opened up, or needed something pulled from the safe, Ms. Mejia and other managers would often have to handle the situation immediately even if they were on their breaks.

On information and belief, Sonic has a company-wide policy and/or practice of communicating with employees regarding work-related matters during the employees' meal periods and when those employees are otherwise clocked out. As stated above, Ms. Mejia's meal periods were interrupted when an employee needed to access one of Sonic's secured rooms or the store safe. Additionally, during her employment, Sonic would contact Ms. Mejia on her days off to have her help with managerial tasks, such as finding something that was missing, or to contact other workers.

Sonic knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Mejia and other Aggrieved Employees were at times performing their assigned duties off-the-clock, were subject to control of Sonic, and/or were suffered or permitted to work for which they were not paid. Sonic also knew, or should have known, that it did not compensate Ms. Mejia and other Aggrieved Employees for off-the-clock work or all hours worked. Because Ms. Mejia and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other times, Sonic simply did not pay for all the hours that were recorded. Therefore, Ms. Mejia and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Sonic's failure to pay Ms.

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Mejia and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and Wage Order No. 5.

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

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

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050, subd. 2(K) (defining "Hours Worked").

As set forth above, on information and belief, Sonic's policy and/or practice of staffing their locations based on labor budgets set by the corporate office and/or upper management resulted in chronic understaffing, causing a lack of meal period coverage and leading employees to perform off-the-clock work pre-shift, post-shift and/or during their meal periods. Moreover, Sonic's policy and/or practice of communicating with employees regarding work-related matters during meal periods and when those employees are otherwise clocked out resulted in employees performing unpaid work. Sonic did not pay minimum wages for these off-the-clock hours that Ms. Mejia and other Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods.

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

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

Labor Code sections 226.7, 512(a) and 1198 and Wage Order No. 5 require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor

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Code sections 226.7 and 512(a) and Wage Order No. 5, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start after no more than five hours. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Moreover, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, No. 2:09-cv-09554, 2011 U.S. Dist. LEXIS 156685, at *11-*12 (C.D. Cal. Jan. 11, 2011).

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. Wage Order No. 5 provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and Wage Order No. 5, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

On information and belief, and as set forth above, Sonic has a company-wide policy and/or practice of understaffing its restaurants which resulted in a lack of break coverage and prevented Ms. Mejia and other Aggrieved Employees from taking all timely, uninterrupted meal periods, including second meal periods, to which they were entitled. Moreover, Sonic’s policy and/or practice of communicating with employees regarding work-related matters during meal periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods..

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

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As with meal periods, Sonic's company-wide staffing policy and/or practice prevented Ms. Mejia and other Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a result, Ms. Mejia and other Aggrieved Employees would frequently work shifts in excess of three and one-half hours, and in excess of six hours without receiving all uninterrupted ten-minute rest periods to which they were entitled. Ms. Mejia was not able to take rest periods due to the pressure Sonic placed on her to meet workload demands, as well as a lack of break coverage.

Sonic also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Mejia and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Mejia and other Aggrieved Employees were unaware of when meal and/or rest period premiums were owed to them. Based upon information and belief, Ms. Mejia and other Aggrieved Employees did not receive all meal period and/or rest period premium wages owed when compliant meal periods and rest periods were not provided. To the extent that Sonic did pay meal period and/or rest period premium wages to Ms. Mejia and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods.

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

Violation of California Labor Code Section 226(a)

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

Sonic has provided Ms. Mejia and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Sonic violated, among others, Sections 226(a)(1), 226(a)(2) 226(a)(5), and 226(a)(9). Because Sonic did not record all the hours Ms. Mejia and other Aggrieved Employees worked while off-the-clock and did not pay all hours recorded, Sonic did

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

Because Sonic failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Mejia and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full and were given confusing and/or incomplete information about their employer. Instead, Ms. Mejia and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Mejia and other Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon for violations of Labor Code section 226(a), pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

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

Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by Section 1174(d). During the relevant time period, Sonic willfully failed to maintain accurate payroll records for Ms. Mejia and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked

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and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to Wage Order No. 5, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, Sonic failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Ms. Mejia and other Aggrieved Employees, in violation of Labor Code sections 1174(d) and Wage Order No. 5.

Due to Sonic’s failure to maintain accurate payroll and time records, Ms. Mejia and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 204

Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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

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

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

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California Labor Code sections 201-203² provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

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

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

Violation of California Labor Code Sections 1198, 2800 and 2802 and California Code of Regulations Title 8, Section 11050 Subdivision 9

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code sections 2800 and 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). Wage Order No. 5 provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." Cal. Code Regs. tit. 8 § 11050, subd. 9(B).

During the relevant time period, Ms. Mejia and other Aggrieved Employees were required to utilize their own personal cell phones to carry out their job duties. Ms. Mejia and other Aggrieved Employees were required to use their own personal phones to contact each other when work-related matters arose, such as communicating work schedules to employees. Although Sonic required Ms. Mejia and other Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, Sonic did not reimburse them for this expense. Sonic could have provided Ms. Mejia and other Aggrieved Employees with the actual tools and materials required for use on the job, including adequate internet and company phones, but instead, Sonic passed this operating cost off onto Ms. Mejia and other Aggrieved Employees.

² Ms. Mejia also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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Sonic's policy, practice and/or procedure of passing its operating costs on to Ms. Mejia and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Ms. Mejia and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g). **Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)**

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

Pursuant to Wage Order No. 5:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

Cal. Code Regs. tit. 8 § 11050, subd. 5.

Upon information and belief, Sonic violated California Labor Code section 1198 and Wage Order No. 5, because it failed to pay Ms. Mejia and Aggrieved Employees reporting time pay when they reported to work for the scheduled shift but were put to work for less than half of the scheduled hours. For instance, although Ms. Mejia and other Aggrieved Employees were sent home early when business was slow, Ms. Mejia and other Aggrieved Employees were not paid reporting time as required.

As a result of Sonic's violation of California Labor Code section 1198 and Wage Order No. 5, Ms. Mejia and other Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14

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Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code section 1198 further requires that “... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful.” The suitable seating requirement is a standard condition of labor for employees. *Bright v. 99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

Wage Order No. 5 provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” Cal. Code Regs. tit. 8 § 11050, subd. 14.

Although Ms. Mejia and other Aggrieved Employees perform tasks that reasonably permit the use of seats, Sonic refuses to provide seats in violation of Labor Code section 1198 and Wage Order No. 5. Sonic also failed to provide seating for Ms. Mejia and other Aggrieved Employees during their breaks. Accordingly, Ms. Mejia and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code Section 558(a)

Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”³ Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Sonic, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Mejia’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth herein.

* * *

³ Ms. Mejia does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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

Therefore, on behalf of all Aggrieved Employees, Ms. Mejia seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

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

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

Best Regards,



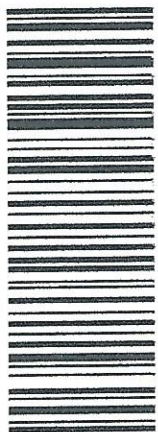
Mark Yablonovich

Copy to: Coast to Coast Commercial, LLC (via U.S. Certified Mail)

LAW OFFICES OF

MARK YABLONOVICH9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511

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