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Superior Court Of California
County Of Los Angeles

APR 30 2021

Sherri R. Carter, Executive Officer/Clerk
By Michelle Miro Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

BY FAX

12 LUCIO ROSAS, individually, and on
13 behalf of other members of the general
14 public similarly situated,

15 Plaintiff,

16 vs.

17 DUKE'S SURF CITY PARTNERSHIP, A
18 CALIFORNIA LIMITED PARTNERSHIP, a
19 California limited partnership; TS
20 ALOHA, INC., a Hawaii corporation; and
21 DOES 1 through 10, inclusive,

22 Defendants.

Case No.: 20STCV47431

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Lucio Rosas, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Los Angeles and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one location within the County of Los Angeles, including Defendants' restaurant in Malibu (21150 Pacific Coast Highway, Malibu, California 90265). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Los Angeles County and Plaintiff could bring this action to recover penalties in Los Angeles County, venue is proper. *Id.*

THE PARTIES

4. Plaintiff Lucio Rosas is a resident of Westminster, in Orange County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Line Cook from approximately June 2003 to March 17, 2020. Plaintiff worked for Defendants at their restaurant located at 317 Pacific Coast Highway, Huntington Beach, California 92648. During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) to six (6) days per week. Plaintiff's primary job duties included, without limitation, washing and chopping vegetables, carving meat, cooking dishes according to recipes, and cleaning the kitchen.

5. DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP was and is, upon information and belief, a California limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. TS ALOHA, INC. was and is, upon information and belief, a Hawaii

1 corporation, and at all times hereinafter mentioned, an employer whose employees are
2 engaged throughout this county, the State of California, or the various states of the United
3 States of America.

4 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
5 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
6 amend the complaint and serve such fictitiously named Defendants once their names and
7 capacities become known.

8 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
9 were the partners, agents, owners, or managers of DUKE'S SURF CITY PARTNERSHIP, A
10 CALIFORNIA LIMITED PARTNERSHIP and/or TS ALOHA, INC., at all relevant times.

11 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein was performed by, or is attributable to, DUKE'S SURF
13 CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP; TS ALOHA, INC.;
14 and/or DOES 1 through 10 (collectively, "Defendants" or "DUKE'S"), each acting as the
15 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
16 other co-Defendants and was acting within the course and scope of such agency, employment,
17 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
18 of any and all Defendants were in accordance with, and represent, the official policy of
19 Defendants.

20 10. At all relevant times, Defendants, and each of them, ratified each and every act
21 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
22 and abetted the acts and omissions of each and all the other Defendants in proximately causing
23 the damages herein alleged.

24 11. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
26 omissions, occurrences, and transactions alleged herein.

27 12. Under California law, Defendants are jointly and severally liable as employers
28 for the violations alleged herein because they have each exercised sufficient control over the

1 wages, hours, working conditions, and employment status of Plaintiff and class members.
2 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
3 controlled their work schedule and/or conditions of employment, determined their rate of pay,
4 and maintained their employment records. Defendants suffered or permitted Plaintiff and
5 class members to work and/or “engaged” Plaintiff and class members so as to create a
6 common-law employment relationship. As joint employers of Plaintiff and class members,
7 Defendants are jointly and severally liable for the civil penalties and all other relief available
8 to Plaintiff and class members under the law.

9 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
10 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
11 members because Defendants have:

- 12 (a) jointly exercised meaningful control over the work performed by
13 Plaintiff and class members;
- 14 (b) jointly exercised meaningful control over Plaintiff’s and class members’
15 wages, hours, and working conditions, including the quantity, quality
16 standards, speed, scheduling, and operative details of the tasks
17 performed by Plaintiff and class members;
- 18 (c) jointly required that Plaintiff and class members perform work which is
19 an integral part of Defendants’ businesses; and
- 20 (d) jointly exercised control over Plaintiff and class members as a matter of
21 economic reality in that Plaintiff and class members were dependent on
22 Defendants, who shared the power to set the wages of Plaintiff and class
23 members and determined their working conditions, and who jointly
24 reaped the benefits from the underpayment of their wages and
25 noncompliance with other statutory provisions governing their
26 employment.

27 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
28 there has existed a unity of interest and ownership between Defendants such that any

1 individuality and separateness between the entities has ceased.

2 15. DUKE’S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED
3 PARTNERSHIP; TS ALOHA, INC.; and DOES 1 through 10 are therefore alter egos of each
4 other.

5 16. Adherence to the fiction of the separate existence of Defendants would permit
6 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
7 from liability for the wrongful acts committed by them under the name DUKE’S.

8 17. Plaintiff further alleges, upon information and belief, that Defendants DUKE’S
9 SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP and TS ALOHA,
10 INC. are alter egos of each other for the following reasons:

- 11 (a) On the California Secretary of State’s website
12 (<https://businesssearch.sos.ca.gov/>), DUKE’S SURF CITY
13 PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP and TS
14 ALOHA, INC. share the same entity and entity mailing address, “225 W
15 PLAZA ST, STE 300, SOLANA BEACH, CA 92075;”
- 16 (b) On information and belief, DUKE’S SURF CITY PARTNERSHIP, A
17 CALIFORNIA LIMITED PARTNERSHIP and TS ALOHA, INC. share
18 the same agent for service of process, “JACQUELINE [RENE] REED,”
19 who is also the Chief Executive officer of TS ALOHA, INC.; and
- 20 (c) DUKE’S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED
21 PARTNERSHIP and TS ALOHA, INC. utilize the same standardized
22 employment forms and issue the same employment policies.

23 GENERAL ALLEGATIONS

24 18. Defendants own and operate at least five (5) full-service restaurants throughout
25 California. Upon information and belief, Defendants maintain a single, centralized Human
26 Resources (“HR”) department at their company headquarters in Solana Beach, California,
27 which is responsible for recruiting and hiring of new employees, and communicating and
28 implementing Defendants’ company-wide policies, including timekeeping policies and meal

1 and rest period policies, to employees throughout California.

2 19. In particular, Plaintiff and class members, on information and belief, received
3 the same standardized documents and/or written policies. Upon information and belief, the
4 usage of standardized documents and/or written policies, including new-hire documents,
5 indicate that Defendants dictated policies at the corporate level and implemented them
6 company-wide, regardless of their employees' assigned locations or positions. Upon
7 information and belief, Defendants set forth uniform policies and procedures in several
8 documents provided at an employee's time of hire.

9 20. Upon information and belief, Defendants maintain a centralized Payroll
10 department at their company headquarters in Solana Beach, California, which processes
11 payroll for all non-exempt, hourly paid employees working for Defendants at their various
12 locations and jobsites in California, including Plaintiff and class members. Based upon
13 information and belief, Defendants issue the same formatted wage statements to all non-
14 exempt, hourly paid employees in California, irrespective of their work locations. Upon
15 information and belief, Defendants process payroll for departing employees in the same
16 manner throughout the State of California, regardless of the manner in which each employee's
17 employment ends.

18 21. Defendants continue to employ non-exempt or hourly paid employees in
19 California.

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

24 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
25 members were not paid for all hours worked because all hours worked were not recorded.

26 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive certain wages for
28 overtime compensation and that they were not receiving certain wages for overtime

1 compensation.

2 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive at least minimum
4 wages for compensation and that they were not receiving at least minimum wages for work
5 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
6 and class members were not paid at least minimum wages for work done off-the-clock.

7 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to meal periods in
9 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
10 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
11 periods and that Plaintiff and class members were not provided with all meal periods or
12 payment of one (1) additional hour of pay at their regular rates of pay when they did not
13 receive a timely, uninterrupted, thirty (30) minute meal period.

14 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to rest periods in
16 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
17 additional hour of pay at their regular rates of pay when they were not authorized and
18 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
19 and class members were not authorized and permitted to take compliant rest periods, nor did
20 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
21 pay at their regular rates of pay when they were not authorized and permitted to take a
22 compliant rest period.

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

28 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to timely payment of all
6 wages earned upon termination of employment. In violation of the California Labor Code,
7 Plaintiff and class members did not receive payment of all wages due, including, but not
8 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
9 time pay, within permissible time periods.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to timely payment of wages
12 during their employment. In violation of the California Labor Code, Plaintiff and class
13 members did not receive payment of all wages, including, but not limited to, overtime wages,
14 minimum wages, meal and rest period premiums, and/or reporting time pay, within
15 permissible time periods.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that they were not permitted to compel or coerce Plaintiff and/or class
18 members to patronize their business in the purchase of anything of value, but did in fact
19 require Plaintiff and/or class members to purchase various items, including uniforms, from
20 Defendants.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive all reporting time
23 pay when Defendants required Plaintiff and class members were required to report to work but
24 were put to work for less than half of their regular scheduled shift. In violation of the
25 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

26 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to suitable seating and/or
28 were entitled to sit when it did not interfere with the performance of their duties and also have

1 seats nearby to use during a lull in tasks that do require moving about or standing.

2 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive full
4 reimbursement for all business-related expenses and costs they incurred during the course and
5 scope of their employment and that they did not receive full reimbursement of applicable
6 business-related expenses and costs incurred.

7 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, Defendants knew or should have known that Defendants had a duty to provide
9 Plaintiff and class members with written notice of the material terms of their employment with
10 Defendants as required by the California Wage Theft Prevention Act, but willfully,
11 knowingly, and intentionally failed to do so.

12 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that they had a duty to compensate
14 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
15 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
16 falsely represented to Plaintiff and class members that they were properly denied wages, all in
17 order to increase Defendants' profits.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

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

25 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
26 person who was employed by the alleged violator and against whom one or more of the
27 alleged violations was committed."

28 40. Plaintiff and other current and former employees of Defendants are "aggrieved

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

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

- (a) The aggrieved employee or representative shall give 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, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (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.

42. Pursuant to California Labor Code sections 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 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

1 been violated (other than those listed in Section 2699.5), including the
2 facts and theories to support the alleged violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(c) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

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

15 43. On December 21, 2020, Plaintiff provided written notice by online filing to the
16 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
17 Code alleged to have been violated, including facts and theories to support the alleged
18 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
19 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
20 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
21 Plaintiff PAGA Case Number LWDA-CM-816044-20. A true and correct copy of Plaintiff's
22 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

23 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
24 sent the notice described above to the LWDA, and the LWDA has not responded that it
25 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

26 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
27 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
28 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510,

1 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

2 46. Labor Code section 558(a) provides “[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
9 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
10 to any other civil or criminal penalty provided by law.”

11 47. Defendants, at all times relevant to this complaint, were employers or persons
12 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
13 rights by violating various sections of the California Labor Code as set forth above.

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

17 Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
18 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
19 private attorney general, seeks assessment and collection of civil penalties for himself, all
20 other aggrieved employees, and the State of California against Defendants for violations of
21 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516,
22 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

23 **CLASS ACTION ALLEGATIONS**

24 49. Plaintiff brings this action on his own behalf, as well as on behalf of each and
25 all other persons similarly situated, and thus seeks class certification under California Code of
26 Civil Procedure section 382.

27 50. All claims alleged herein arise under California law for which Plaintiff seeks
28 relief authorized by California law.

1 51. Plaintiff's proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California, within four years prior to the filing
 of the initial complaint until the date of trial ("Class").

4 52. Plaintiff's proposed subclass consists of and is defined as follows:

5 All persons who worked for Defendants as non-exempt, hourly
6 paid employees in California and who received at least one wage
7 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial ("Subclass").

8 53. Members of the Class and Subclass are referred to herein as "class members."

9 54. Plaintiff reserves the right to redefine the Class and Subclass and to add
10 additional subclasses as appropriate based on further investigation, discovery, and specific
11 theories of liability.

12 55. There are common questions of law and fact as to class members that
13 predominate over questions affecting only individual members, including, but not limited to:

- 14 (a) Whether Defendants required Plaintiff and class members to work over
15 eight (8) hours per day, over twelve (12) hours per day, or over forty
16 (40) hours per week and failed to pay all legally required overtime
17 compensation to Plaintiff and class members;
18 (b) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
20 (c) Whether Defendants failed to provide Plaintiff and class members with
21 meal periods;
22 (d) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
24 (e) Whether Defendants provided Plaintiff and class members with
25 complete and accurate wage statements as required by California Labor
26 Code section 226(a);
27 (f) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (g) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, meal and rest period premiums, and/or reporting time pay due to
3 Plaintiff and class members upon their discharge;
- 4 (h) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, meal and rest period premiums, and/or reporting time pay to
6 Plaintiff and class members during their employment;
- 7 (i) Whether Defendants compelled and/or coerced Plaintiff and/or class
8 members to patronize their business;
- 9 (j) Whether Defendants required Plaintiff and class members to report to
10 work, but failed to provide them with work or provided them with less
11 than half their scheduled day's work, without properly compensating
12 them as required by California Code of Regulations, Title 8, section
13 11050, subsection 5;
- 14 (k) Whether Defendants failed to provide Plaintiff and class members with
15 suitable seating;
- 16 (l) Whether Defendants failed to reimburse Plaintiff and class members for
17 necessary and required business-related expenditures and/or losses
18 incurred by them in the scope of their employment;
- 19 (m) Whether Defendants failed to provide written notice of information
20 material to Plaintiff's and class members' employment with Defendants;
- 21 (n) Whether Defendants engaged in unlawful and unfair business practices
22 in violation of California Business & Professions Code sections 17200,
23 *et seq.*; and
- 24 (o) The appropriate amount of damages, restitution, or monetary penalties
25 resulting from Defendants' violations of California law.

26 56. There is a well-defined community of interest in the litigation and the class
27 members are readily ascertainable:

- 28 (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiff at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
7 protect the interests of each class member with whom he has a well-
8 defined community of interest, and Plaintiff's claims (or defenses, if
9 any) are typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom he has a well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiff acknowledges that he has an obligation to make known
14 to the Court any relationship, conflicts or differences with any class
15 member. Plaintiff's attorneys, the proposed class counsel, are versed in
16 the rules governing class action discovery, certification, and settlement.
17 Plaintiff has incurred, and throughout the duration of this action, will
18 continue to incur costs and attorneys' fees that have been, are, and will
19 be necessarily expended for the prosecution of this action for the
20 substantial benefit of each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the
26 entire class.

27 (e) Public Policy Considerations: Employers in the State of California
28 violate employment and labor laws every day. Current employees are

1 often afraid to assert their rights out of fear of direct or indirect
2 retaliation. Former employees are fearful of bringing actions because
3 they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class
5 actions provide the class members who are not named in the complaint
6 with a type of anonymity that allows for the vindication of their rights
7 while simultaneously protecting their privacy.

8 **FIRST CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 10 **(Against all Defendants)**

11 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

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

18 59. California Labor Code section 1198 and the applicable IWC Wage Order
19 provide that it is unlawful to employ persons without compensating them at a rate of pay
20 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
21 number of hours worked by the person on a daily or weekly basis.

22 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and class members working more than eight (8) hours in a day
24 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
25 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
26 workweek.

27 61. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiff and class members working more than twelve (12) hours in a day,

overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

62. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

63. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

64. During the relevant time period, upon information and belief, Defendants had, and continue to have, a company-wide policy and/or practice of strictly staffing their restaurant locations based on the labor hours allocated by corporate for each location. Defendants' uniform use of labor budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to provide Plaintiff and class members with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customer demand. Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Plaintiff and class members were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Defendants sometimes instructed Plaintiff to work through all or parts of his meal periods preparing orders to meet customer demands.

65. Additionally, Defendants' company-wide timekeeping system prevented Plaintiff and class members from recording all hours worked when their meal periods were

1 shortened or interrupted, because the system locked out Plaintiff and class members once they
2 clocked out for a meal period, and would not permit them to clock back in from a meal period
3 before 30 minutes had elapsed. Thus, Defendants' timekeeping system prevented Plaintiff
4 and class members from recording all hours worked when their meal periods were shortened
5 or interrupted.

6 66. Defendants knew or should have known that as a result of these company-wide
7 practices and/or policies, Plaintiff and class members were performing assigned duties during
8 meal periods, and were suffered or permitted to perform work for which they were not paid.
9 Because Plaintiff and class members worked shifts of eight (8) hours a day or more or forty
10 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
11 pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the
12 overtime hours they actually worked.

13 67. Defendants' failure to pay Plaintiff and class members the balance of overtime
14 compensation as required by California law, violates the provisions of California Labor Code
15 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
16 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
17 and attorneys' fees.

18 **SECOND CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 20 **Minimum Wages** 21 **(Against all Defendants)**

22 68. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
25 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
26 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
27 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time
28 during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
2 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

3 70. As stated above, on information and belief, due to Defendants’ company-wide
4 practice of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal
5 periods, and subsequent lack of meal period coverage, Plaintiff and class members were
6 impeded from taking all uninterrupted meal periods to which they were entitled and were
7 required to work off-the-clock. Moreover, as stated, Defendants systematically failed to pay
8 Plaintiff and class members for actual hours worked during unpaid meal periods, because
9 Defendants’ timekeeping system locked out Plaintiff and class members for 30 minutes when
10 they clocked out for a meal period.

11 71. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
12 and class members worked through that qualified for overtime premium payment. To the
13 extent that these off-the-clock hours did not qualify for overtime premium payment,
14 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
15 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

16 72. Defendants’ failure to pay Plaintiff and class members minimum wages violates
17 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
18 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

20 **THIRD CAUSE OF ACTION**

21 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

22 **Violations**

23 **(Against all Defendants)**

24 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 74. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
5 2012).

6 75. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 76. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
10 the applicable IWC Wage Order also require employers to provide a second meal period of
11 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.

15 77. As stated above, upon information and belief, Defendants had, and continue to
16 have, a company-wide policy and/or practice of understaffing their locations due to labor
17 budgeting, which, combined with heavy workloads and failure to schedule meal periods,
18 resulted in a lack of meal period coverage and prevented Plaintiff and class members from
19 taking all timely, uninterrupted meal periods to which they were entitled. Consequently,
20 Plaintiff and class members suffered missed, late, and/or interrupted meal periods.

21 78. Moreover, as described above, Defendants implemented an electronic
22 timekeeping system that locked Plaintiff and class members out and prevented them from
23 clocking in early before the end of their 30-minute meal period. As a result of Defendants'
24 timekeeping system, Plaintiff and class members were prevented from accurately recording
25 meal period start and stop times on days when they had meal periods that were cut short
26 and/or interrupted.

27 79. Defendants' practice of labor budgeting, resultant understaffing, failure to
28 schedule meal periods, and lack of adequate meal period coverage prevented Plaintiff and

1 class members from taking all compliant meal periods to which they were entitled.

2 80. As a result, Plaintiff and class members would be forced to work in excess of
3 five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
4 forgo their meal periods altogether. For example, Plaintiff would miss his meal periods once
5 per month or have them interrupted or cut short at least once per week, due to a lack of
6 coverage and heavy workload; Plaintiff would also be required to take his meal periods late,
7 e.g., after his sixth hour of work, approximately once per week for the same reasons. Plaintiff
8 and class members did not sign valid meal period waivers on days that they were entitled to
9 meal periods and were not relieved of all duties.

10 81. Moreover, Defendants had a company-wide policy of requiring all newly hired
11 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
12 the position that non-exempt, hourly paid employees working six (6) hour shifts had waived
13 their rights to take a 30-minute meal period on these particular shifts, for the entirety of their
14 employment and, on that basis, did not provide them with all meal periods to which they were
15 entitled. Defendants' company-wide use of blanket meal period waivers signed at or near the
16 time of hire discouraged and impeded Plaintiff and class members from taking all meal
17 periods to which they were entitled.

18 82. At all times herein mentioned, Defendants knew or should have known that as a
19 result of its company-wide policies and/or practices, were not actually relieved of all duties to
20 take timely, uninterrupted meal periods. Defendants further knew or should have known that
21 Defendants did not pay Plaintiff and class members meal period premium wages when meal
22 periods were missed, late, short, and/or interrupted.

23 83. Moreover, Defendants engaged in a company-wide practice and/or policy of
24 not paying all meal period premiums owed when compliant meal periods are not provided.
25 Because of Defendants' practices and/or policies, Plaintiff and class members have not
26 received premium pay for all missed, late, and interrupted meal periods. As a result,
27 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
28 of California Labor Code sections 226.7, 512(a), and 516.

84. Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

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

86. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members’ employment by Defendants.

87. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

88. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day

1 that a required rest period was not authorized and permitted.

2 89. During the relevant time period, Defendants regularly failed to authorize and
3 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
4 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
5 practices, including utilization of labor budgets, resultant understaffing, and assignment of
6 heavy workloads, prevented Plaintiff and class members from being relieved of all duty to
7 take their rest periods. Additionally, Defendants failed to schedule rest periods, which,
8 coupled with Defendants' failure to provide adequate rest period coverage, further led to
9 Plaintiff and class members not being authorized and permitted to take compliant rest periods.

10 90. Furthermore, Defendants maintained a company-wide on-premises rest period
11 policy, which mandated that Plaintiff and class members remain on Defendants' premises
12 during their rest periods. Because Plaintiff and class members were restricted from leaving
13 the premises during rest periods, they were denied the ability to use their rest periods freely
14 for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and
15 class members during rest periods.

16 91. As a result of Defendants' practices and policies, Plaintiff and class members
17 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
18 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
19 Plaintiff missed his rest periods due to his workload, failure to schedule rest periods, and a
20 lack of rest period coverage.

21 92. Defendants have also engaged in a systematic, company-wide practice and/or
22 policy of not paying rest period premiums owed when rest periods are not authorized and
23 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
24 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
25 and the applicable IWC Wage Order.

26 93. Defendants' conduct violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
28 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of

1 compensation for each work day that a compliant rest period was not authorized and
2 permitted.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
5 **Statements and Failure to Maintain Accurate Payroll Records**
6 **(Against all Defendants)**

7 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

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

14 96. At all relevant times, Defendants have knowingly and intentionally provided
15 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
16 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
17 that fail to correctly list: gross wages earned; total hours worked; net wages earned; name of
18 the legal entity that is the employer; and all applicable hourly rates in effect during the pay
19 period, including overtime rates of pay, and the corresponding number of hours worked at
20 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
21 226(a)(8), and 226(a)(9).

22 97. Because Defendants did not record the time Plaintiff and Subclass members
23 spent working off the clock, Defendants did not list the correct amount of gross wages and net
24 wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and
25 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
26 worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list
27 the applicable hourly rates of pay in effect during the pay period and corresponding accurate
28 number of work hours worked at each hourly rate in violation of section 226(a)(9).

1 98. Separate from these violations, Defendants issued uniform wage statements to
2 Plaintiff and Subclass members that failed to correctly list the name of the legal entity of the
3 actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide
4 California employees with transparency as to the true identity of their employer, to allow the
5 employee to contact their employer during employment in the future for various reasons,
6 including, filing an administrative claim, judicial claim, or other action to seek relief against
7 their employer, to obtain unemployment benefits, etc.

8 99. Defendants systematically, and on a company-wide basis, issued wage
9 statements to Plaintiff and Subclass members that incorrectly list the employing entity's name.
10 Plaintiff's and Subclass members' wage statements incorrectly list the employer as "DUKES
11 SURF CITY LP," and according to the California Secretary of State's website, there is no
12 such entity by the name "DUKES SURF CITY LP." Plaintiff believes that the correct
13 employing entity that should be listed on employees' wage statements is "DUKE'S SURF
14 CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP."

15 100. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the address of the legal entity that is
20 the employer; failing to list the inclusive dates of the period for which employees were paid;
21 and/or failing to state all hours worked as a result of not recording or stating hours worked
22 off-the-clock.

23 101. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
3 and meal period start and stop times for Plaintiff and Subclass members, in violation of
4 section 1198.

5 102. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
12 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
13 members showing the daily hours they worked and the wages paid thereto as a result of failing
14 to record the off-the-clock hours that they worked.

15 103. Plaintiff and Subclass members are entitled to recover from Defendants the
16 greater of their actual damages caused by Defendants’ failure to comply with California Labor
17 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
18 employee.

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

21 **Upon Termination**

22 **(Against all Defendants)**

23 104. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

106. On information and belief, Defendants have a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was furloughed and terminated on March 17, 2020, but did not receive his final wages from Defendants until nearly a month later, on or about April 17, 2020. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of Labor Code section 201.

107. Moreover, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

108. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment (Against all Defendants)

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

110. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, that
2 were not timely paid to Plaintiff and those class members by Defendants during their
3 employment.

4 111. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed.

9 112. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned by any person in any employment between the sixteenth (16th) and the last day,
11 inclusive, of any calendar month, other than those wages due upon termination of an
12 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
13 month.

14 113. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 114. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 class members all wages due including, but not limited to, overtime wages, minimum wages,
22 meal and rest period premium wages, and/or reporting time pay, within the time periods
23 specified by California Labor Code section 204.

24 115. Defendants' failure to pay Plaintiff and class members all wages due violates
25 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

5 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 117. California Labor Code section 1198 dictates that no employer may employ an
8 employee under conditions of labor that are prohibited by the applicable IWC wage order.
9 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
10 fixed by the commission shall be the . . . standard conditions of labor for employees. The
11 employment of any employee . . . under conditions of labor prohibited by the order is
12 unlawful.”

13 118. The applicable IWC wage order, California Code of Regulations, Title 8,
14 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
15 work and does report, but is not put to work or is furnished less than half said employee’s
16 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
17 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
18 employee’s regular rate of pay, which shall not be less than the minimum wage.”

19 119. During the relevant time period, Defendants violated California Labor Code
20 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
21 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
22 work for their scheduled shift but were put to work for less than half of the regularly
23 scheduled day’s work.

24 120. Defendants had a company-wide practice of sending Plaintiff and class
25 members home early from their shifts, including before they had worked at least half of their
26 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
27 For example, Plaintiff would report to work, but would be sent home after an hour by
28 Defendants’ management because work was slow. Although Plaintiff and class members

1 would report to work based on the schedule that Defendants provided to them, Defendants
2 would send them home before they had worked at least half of their scheduled shifts without
3 giving them reporting time pay.

4 121. Accordingly, Plaintiff and class members were not properly compensated with
5 reporting time pay in violation of California Labor Code section 1198.

6 **NINTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
8 **(Against all Defendants)**

9 122. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 123. At all times herein set forth, California Labor Code section 2802 provides that
12 an employer must reimburse employees for all necessary expenditures and losses incurred by
13 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
14 to prevent employers from passing off their cost of doing business and operating expenses on
15 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
16 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
17 equipment are required by the employer or are necessary to the performance of a job, such
18 tools and equipment shall be provided and maintained by the employer, except that an
19 employee whose wages are at least two (2) times the minimum wage provided herein may be
20 required to provide and maintain hand tools and equipment customarily required by the trade
21 or craft.”

22 124. First, during the relevant time period, Defendants had a company-wide policy
23 of requiring Plaintiff and class members to utilize their own personal cellular phones and
24 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
25 of their work-related cellular phone expenses. Plaintiff and class members were required to
26 use their personal cellular phones to complete their work-related tasks, such as communicating
27 with supervisors regarding work-related matters. For example, Plaintiff was required to call
28 his supervisor on his personal cellular phone to alert him about food product and supplies that

1 needed to be replenished. Although Defendants required Plaintiff and class members to
2 utilize their personal cellular phones to carry out their work-related responsibilities,
3 Defendants failed to reimburse them for this cost.

4 125. Second, during the relevant time period, Defendants, on a company-wide basis,
5 forced Plaintiff and class members to purchase basic supplies and tools that were necessary
6 for completion of their work-related duties. For example, Plaintiff was required to purchase
7 knives, spoons, and thermometers in order to perform his job duties in the kitchen. Although
8 Defendants required Plaintiff and class members to purchase and use their own supplies and
9 tools for work, Defendants did not reimburse them for these expenses.

10 126. Third, Defendants, on a company-wide basis, expected Plaintiff and class
11 members to report to work in clean and presentable uniforms, including a uniform black hat
12 emblazoned with the Duke's logo, but only provided their employees with one set of uniform
13 items. Thus, Defendants failed to provide Plaintiff and class members with an adequate
14 number of uniforms in relation to their scheduled shifts and for the tasks they were required to
15 perform, forcing Plaintiff and class members to pay out-of-pocket for some of their uniform
16 components. For example, Plaintiff was required to purchase a replacement black hat stitched
17 with Duke's logo. Since Defendants did not provide an adequate number of uniform
18 components to all employees, Plaintiff and class members were required to purchase
19 additional uniform items, such as hats, directly from Defendants, and were not reimbursed for
20 these costs.

21 127. Defendants could have provided Plaintiff and class members with the actual
22 tools for use on the job, such as company phones, supplies and tools, and uniforms. Or,
23 Defendants could have reimbursed employees for the costs of their cellular phone, supplies
24 and tools, and uniform replacements. Instead, Defendants passed these operating costs off
25 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)
26 times the minimum wage.

27 128. Defendants' company-wide policy and/or practice of passing on their operating
28 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants

1 have intentionally and willfully failed to reimburse Plaintiff and other class members for
2 necessary business-related expenses and costs.

3 129. Plaintiff and class members are entitled to recover from Defendants their
4 business-related expenses incurred during the course and scope of their employment, plus
5 interest.

6 **TENTH CAUSE OF ACTION**

7 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

8 **(Against all Defendants)**

9 130. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 131. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
12 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
13 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
14 226.7, 450, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
15 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
16 violations of those Labor Code sections not found in section 2699.5, including sections 516,
17 1182.12, and 2810.5.

18 132. Defendants’ conduct, as alleged herein, violates numerous sections of the
19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
21 wage order for Defendants’ failure to compensate Plaintiff and other
22 aggrieved employees with all required overtime pay, as alleged herein;
- 23 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
24 and the applicable IWC wage order for Defendants’ failure to
25 compensate Plaintiff and other aggrieved employees with at least
26 minimum wages for all hours worked, as alleged herein;
- 27 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
28 applicable IWC wage order for Defendants’ failure to provide Plaintiff

- 1 and other aggrieved employees with meal periods, as alleged herein;
- 2 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
- 3 IWC wage order for Defendants' failure to authorize and permit
- 4 Plaintiff and other aggrieved employees to take rest periods, as alleged
- 5 herein;
- 6 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
- 7 wage order for failure to provide accurate and complete wage statements
- 8 to Plaintiff and other aggrieved employees, as alleged herein;
- 9 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
- 10 IWC wage order for failure to maintain payroll records, as alleged
- 11 herein;
- 12 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
- 13 earned wages upon termination, as alleged herein;
- 14 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 15 during employment, as alleged herein;
- 16 (i) Violation of California Labor Code section 450 for Defendants'
- 17 compelling and/or coercing other aggrieved employees to patronize
- 18 Defendants' business, as set forth below;
- 19 (j) Violation of Labor Code section 1198 and the applicable IWC wage
- 20 order for failure to pay reporting time pay when Plaintiff and other
- 21 aggrieved employees were put to work for less than half of their regular
- 22 scheduled shifts, as alleged herein;
- 23 (k) Violation of Labor Code section 1198 for failing to provide suitable
- 24 seating to Plaintiff and other aggrieved employees, as set forth below;
- 25 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
- 26 and other aggrieved employees for all business expenses necessarily
- 27 incurred, as alleged herein; and
- 28 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to

1 provide written notice of information material to other aggrieved
2 employees' employment with Defendants, as set forth below.

3 133. California Labor Code section 450 provides that an employer may not "compel
4 or coerce any employee, or applicant for employment, to patronize his or her employer, or any
5 other person, in the purchase of anything of value." An employer violates section 450 by
6 forcing an employee to patronize the employer's business in the purchase of a company-
7 provided good.

8 134. During the relevant time period, Defendants had a company-wide policy of
9 requiring employees to purchase uniform items directly from the company. Upon information
10 and belief, other aggrieved employees were required to pay for uniform items, including black
11 uniform hats bearing Defendants' logo. For example, other aggrieved employees were
12 required to wear a hat for work, as part of their uniforms, but would only be provided one hat,
13 requiring them to purchase replacements from Defendants as needed.

14 135. Defendants' conduct of compelling and/or coercing other aggrieved employees
15 to purchase goods from them is in violation of California Labor Code section 450. Other
16 aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections
17 2699(a), (f), and (g).

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

24 137. California Code of Regulations, Title 8, section 11050(14)(A) provides that
25 "[a]ll working employees shall be provided with suitable seats when the nature of the work
26 reasonably permits the use of seats."

27 138. Plaintiff alleges that Defendants' California restaurants are generally similar in
28 their layout and design and there was, and continues to be, space behind host stands to allow

1 for the presence and use of a seat or stool by other aggrieved employees (with reasonable or
2 no modification to these work areas) during the performance of their work duties. Defendants
3 could have provided other aggrieved employees with a seat or stool at their host stands, but
4 instead denied them seating and forced other aggrieved employees to stand throughout the
5 day.

6 139. Other aggrieved employees spent a substantial portion of their day behind or at
7 these host stands. The nature of the work of an employee performing host duties can
8 reasonably be accomplished from a seated position. However, Defendants systematically, and
9 on a company-wide basis, did not provide seats or stools at or near the host stands, forcing
10 other aggrieved employees to stand throughout their work shifts.

11 140. During the relevant time period, Defendants violated California Labor Code
12 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
13 aggrieved employees were not allowed to sit, even when it would not have interfered with the
14 performance of their duties. Other aggrieved employees were assigned host duties, which
15 were performed from and connected to a host stand, and could have been performed from a
16 seated position. Other aggrieved employees could have provided customer service at the host
17 stand while seated, without interference to their ability to complete these duties.

18 141. Defendants could have placed seats or stools at the host stands for use by other
19 aggrieved employees with reasonable or no modification to these work areas. However, on a
20 company-wide basis, Defendants did not provide seats or stools at host stands. Defendants'
21 management did not inform other aggrieved employees that they were allowed to sit down,
22 provide any feasible means for them to sit down, or mention any policy regarding sitting.

23 142. As a result of Defendants' company-wide policy and/or practice of prohibiting
24 employees from sitting during their shifts and company-wide failure to provide suitable
25 seating, other aggrieved employees were forced to stand during shifts and denied seats.
26 Defendants' failure to provide suitable seating to other aggrieved employees violated and
27 continues to violate California Labor Code section 1198 and IWC Wage Order 5-2001,
28 Section 14(A). Other aggrieved employees are therefore entitled to recover civil penalties

1 pursuant to Labor Code sections 2699(a), (f), and (g).

2 143. At all relevant times herein, California Labor Code section 1198 makes it
3 illegal to employ an employee under conditions of labor that are prohibited by the applicable
4 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
5 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
6 The employment of any employee . . . under conditions of labor prohibited by the order is
7 unlawful.”

8 144. California Code of Regulations, Title 8, section 11050(14)(B) provides that
9 “[w]hen employees are not engaged in the active duties of their employment and the nature of
10 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
11 proximity to the work area and employees shall be permitted to use such seats when it does
12 not interfere with the performance of their duties.”

13 145. During the relevant time period, Defendants violated California Labor Code
14 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
15 Plaintiff and other aggrieved employees were not provided with suitable seats in reasonable
16 proximity to their work areas and, therefore, effectively not allowed to sit, even during lulls in
17 their work duties.

18 146. As stated, Plaintiff alleges that Defendants’ California restaurants are generally
19 similar in their layout and design and there was, and continues to be, space near their work
20 areas (with reasonable or no modification to these work areas) to allow for the presence and
21 use of a seat or stool by Plaintiff and other aggrieved employees during lulls in operation.
22 Defendants could have provided Plaintiff and other aggrieved employees with a seat or stool
23 in their work areas, but instead denied Plaintiff and other aggrieved employees suitable
24 seating altogether and effectively forced Plaintiff and other aggrieved employees to stand
25 throughout the day.

26 147. Defendants did not provide Plaintiff and other aggrieved employees with
27 suitable seats or stools in reasonable proximity to their work areas to allow them to use seats
28 when it would not interfere with the performance of their duties for times when they were not

1 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
2 aggrieved employees engaged in duties in which the nature of the work required standing,
3 Defendants denied them the use of suitable seats nearby during lulls in their work duties.
4 Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights
5 to a seat or stool under California law.

6 148. As a result of Defendants' company-wide policy and/or practice of prohibiting
7 employees from sitting at any time, even when they were not engaged in active duties
8 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
9 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and
10 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
11 employees violated and continues to violate California Labor Code section 1198 and IWC
12 Wage Order 5-2001, Section 14(B). Plaintiff and other aggrieved employees are therefore
13 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 149. California's Wage Theft Prevention Act was enacted to ensure that employers
15 provide employees with basic information material to their employment relationship at the
16 time of hiring, and to ensure that employees are given written and timely notice of any
17 changes to basic information material to their employment. Codified at California Labor
18 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
19 employer must provide written notice to employees containing basic and material payroll
20 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
21 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
22 overtime, the regular payday designated by the employer, and any allowances claims as part
23 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
24 (C).

25 150. During the relevant time period, Defendants failed to provide other aggrieved
26 employees with written notice that lists all the requisite information set forth in Labor Code
27 section 2810.5(a)(1)(A)-(C). Defendants' failure to provide other aggrieved employees with
28 written notice of basic information regarding their employment with Defendants is in violation

1 of Labor Code section 2810.5. Other aggrieved employees are therefore entitled to recover
2 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

3 **ELEVENTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

5 **Unlawful Business Practices**

6 **(Against all Defendants)**

7 151. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 152. Defendants are “persons” as defined by California Business & Professions
10 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
11 and/or associations.

12 153. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
13 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
14 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
15 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
16 meaning of Code of Civil Procedure section 1021.5.

17 154. Defendants’ activities, as alleged herein, are violations of California law, and
18 constitute unlawful business acts and practices in violation of California Business &
19 Professions Code sections 17200, *et seq.*

20 155. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
22 policies and practices have violated state law in at least the following respects:

- 23 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
24 class members, to work overtime without paying them proper
25 compensation in violation of California Labor Code sections 510 and
26 1198 and the applicable IWC Order, as alleged herein;
- 27 (b) Failing to pay at least minimum wage to Plaintiff and class members in
28 violation of California Labor Code sections 1182.12, 1194, 1197,

- 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;
- (g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein;
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and
- (i) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

156. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the

1 time of hiring, an employer must provide written notice to employees containing basic and
2 material payroll information, including, among other things, the rate(s) of pay and basis
3 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
4 including any rates for overtime, the regular payday designated by the employer, and any
5 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
6 Code § 2810.5(a)(1)(A)-(C).

7 157. At all relevant times, on information and belief, Defendants failed, on a
8 company-wide basis, to provide written notice to Plaintiff and class members that lists the
9 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
10 to provide Plaintiff and class members with written notice of basic information regarding their
11 employment with Defendants is in violation of Labor Code section 2810.5.

12 158. As a result of the violations of California law herein described, Defendants
13 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
14 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
15 herein.

16 159. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
17 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of this complaint; a
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
20 class members; and an award of attorneys' fees pursuant to California Code of Civil
21 Procedure section 1021.5 and other applicable laws; and an award of costs.

22 **TWELFTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

24 **Unfair Business Practices**

25 **(Against all Defendants)**

26 160. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 161. Defendants are "persons" as defined by California Business & Professions

1 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
2 and/or associations.

3 162. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
5 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
6 seeks to enforce important rights affecting the public interest within the meaning of Code of
7 Civil Procedure section 1021.5.

8 163. Defendants' activities, namely Defendants' company-wide practice and/or
9 policy of not paying Plaintiff and class members all meal and rest period premium wages due
10 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
11 compensation guarantee and enhanced enforcement implemented by section 226.7. The
12 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
13 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
14 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
15 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
16 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
17 unfair business practice in violation of California Business & Professions Code sections
18 17200, *et seq. (Id.)*

19 164. A violation of California Business & Professions Code sections 17200, *et seq.*
20 may be predicated on any unfair business practice. In the instant case, Defendants' policies
21 and practices have violated the spirit of California's meal and rest period laws and constitute
22 acts against the public policy behind these laws.

23 165. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
25 benefits implemented by section 226.7 withheld and retained by Defendants during a period
26 that commences four years prior to the filing of this complaint; a permanent injunction
27 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
28 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil

1 Procedure section 1021.5 and other applicable laws; and an award of costs.

2 **REQUEST FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
6 against Defendants, jointly and severally, as follows:

7 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
8 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
9 reserves the right to amend his prayer for relief to seek a different amount.

10 **Class Certification**

11 2. That this case be certified as a class action;

12 3. That Plaintiff be appointed as the representative of the Class and Subclass;

13 4. That counsel for Plaintiff be appointed as class counsel.

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

15 5. That the Court declare, adjudge, and decree that Defendants violated California
16 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
17 pay all overtime wages due to Plaintiff and class members;

18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;

20 7. For pre-judgment interest on any unpaid overtime compensation commencing
21 from the date such amounts were due, or as otherwise provided by law;

22 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a); and

24 9. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Second Cause of Action**

27 10. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay

1 minimum wages to Plaintiff and class members;

2 11. For general unpaid wages and such general and special damages as may be
3 appropriate;

4 12. For pre-judgment interest on any unpaid compensation from the date such
5 amounts were due, or as otherwise provided by law;

6 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
7 California Labor Code section 1194(a);

8 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

9 15. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Third Cause of Action**

12 16. That the Court declare, adjudge, and decree that Defendants violated California
13 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
14 willfully failing to provide all meal periods to Plaintiff and class members;

15 17. That the Court make an award to the Plaintiff and class members of one (1)
16 hour of pay at each employee's regular rate of pay for each workday that a meal period was
17 not provided;

18 18. For all actual, consequential, and incidental losses and damages, according to
19 proof;

20 19. For premiums pursuant to California Labor Code section 226.7(c);

21 20. For pre-judgment interest on any unpaid meal period premiums from the date
22 such amounts were due, or as otherwise provided by law;

23 21. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

25 22. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Fourth Cause of Action**

28 23. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
2 failing to authorize and permit Plaintiff and class members to take all rest periods;

3 24. That the Court make an award to the Plaintiff and class members of one (1) hour
4 of pay at each employee's regular rate of pay for each workday that a rest period was not
5 authorized and permitted;

6 25. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 26. For premiums pursuant to California Labor Code section 226.7(c);

9 27. For pre-judgment interest on any unpaid rest period premiums from the date
10 such amounts were due, or as otherwise provided by law;

11 28. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 29. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Fifth Cause of Action**

16 30. That the Court declare, adjudge and decree that Defendants violated the
17 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
18 Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized
19 wage statements thereto;

20 31. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 32. For injunctive relief pursuant to California Labor Code section 226(h);

23 33. For statutory penalties pursuant to California Labor Code section 226(e);

24 34. For attorneys' fees and costs pursuant to California Labor Code section
25 226(e)(1); and

26 35. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

1 47. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Eighth Cause of Action**

4 48. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
6 failing to provide Plaintiff and class members with reporting time pay;

7 49. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 50. For pre-judgment interest on any unpaid wages from the date such amounts
10 were due, or as otherwise provided by law; and

11 51. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 52. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
16 related expenses and costs incurred by Plaintiff and class members;

17 53. For unpaid business-related expenses and such general and special damages as
18 may be appropriate;

19 54. For pre-judgment interest on any unpaid business-related expenses from the
20 date such amounts were due, or as otherwise provided by law;

21 55. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 56. For attorneys' fees and costs pursuant to California Labor Code section
24 2802(c), or as otherwise provided by law; and

25 57. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Tenth Cause of Action**

28 58. That the Court declare, adjudge and decree that Defendants violated the

following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 450 (by compelling and/or coercing employees to patronize employer's business); 1198 (by failing to provide reporting time pay); 1198 (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete

1 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
2 failing timely to pay Plaintiff and class members all earned wages during employment, failing
3 to pay Plaintiff and class members reporting time pay, failing to reimburse Plaintiff and class
4 members for business-related expenses, and failing to provide written notice of information
5 material to employment, constitutes an unlawful business practice in violation of California
6 Business and Professions Code sections 17200, *et seq.*;

7 64. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 65. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections
12 17200, *et seq.*;

13 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

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

17 **As to the Twelfth Cause of Action**

18 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
20 an unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiff and class members and prejudgment interest from the day such amounts were
24 due and payable;

25 70. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections
28 17200, *et seq.*;

1 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

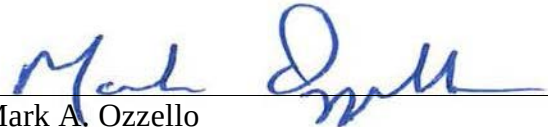
3 72. For pre-judgment and post-judgment interest as provided by law; and

4 73. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: April 30, 2021

Respectfully submitted,

8 Capstone Law APC

9
10 By: 

11 Mark A. Ozzello
12 Brandon K. Brouillette
13 Joseph Hakakian

14 Attorneys for Plaintiff Lucio Rosas
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EXHIBIT 1



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MAO SHIOKURA
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Mao.Shiokura@capstonelawyers.com

December 21, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Lucio Rosas v. Duke's Surf City Partnership, a California Limited Partnership,
et al.*

Dear PAGA Administrator:

This office represents Lucio Rosas in connection with his claims under the California Labor Code. Mr. Rosas was an employee of DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP and/or TS ALOHA, INC. For the purpose of this letter, Mr. Rosas collectively refers to these entities as "DUKES."

The employers may be contacted directly at the addresses below:

DUKE'S SURF CITY PARTNERSHIP, A
CALIFORNIA LIMITED PARTNERSHIP
225 PLAZA ST STE 300
SOLANA BEACH CA 92075

TS ALOHA, INC.
225 W PLAZA ST, STE 300
SOLANA BEACH CA 92075

Mr. Rosas intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Rosas seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DUKES as a non-exempt, hourly paid employee in California and who 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.

DUKES employed Mr. Rosas as an hourly paid, non-exempt employee from approximately June 2003 to March 17, 2020. Mr. Rosas worked for DUKES as a Line Cook at its Duke's restaurant located at 317 Pacific Coast Highway, Huntington Beach, California 92648. During his employment, Mr. Rosas typically worked eight (8) hours or more per day and five (5) to six (6) days per week. At the time Mr. Rosas's employment with DUKES ended, he earned approximately \$21.50 per hour. His job duties included, without limitation, washing and chopping vegetables, carving meat, cooking dishes according to recipes, and cleaning the kitchen.

DUKES committed one or more of the following Labor Code violations against Mr. Rosas, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

DUKES’s Company-Wide and Uniform Payroll and HR Practices

DUKE’S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP is a California limited partnership, while TS ALOHA, INC. is a Hawaii corporation. DUKES operates at least five (5) full-service restaurants throughout California. Upon information and belief, DUKES maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Solana Beach, California, for all non-exempt, hourly paid employees working for DUKES in California, including Mr. Rosas and other aggrieved employees. At all relevant times, DUKES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rosas and other aggrieved employees, regardless of its location or position.

Upon information and belief, DUKES maintains a centralized Payroll department at its corporate headquarters in Solana Beach, California, which processes payroll for all non-exempt, hourly paid employees working for DUKES in California, including Mr. Rosas and other aggrieved employees. Further, DUKES issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Rosas and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, DUKES utilized the same methods and formulas when calculating wages due to Mr. Rosas and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DUKES willfully failed to pay all overtime wages owed to Mr. Rosas and other aggrieved employees. During the relevant time period, Mr. Rosas and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of

¹ These facts, theories, and claims are based on Mr. Rosas’s experience and counsel’s review of those records currently available relating to Mr. Rosas’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 (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Rosas reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, DUKES had, and continues to have, a company-wide policy of and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by corporate for each location. DUKES's uniform use of labor budgets, combined with heavy workloads, resulted in chronic understaffing and a failure to provide Mr. Rosas and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customer demand. DUKES also had a practice of failing to schedule meal periods, which further caused Mr. Rosas and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Rosas and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, DUKES sometimes instructed Mr. Rosas to work through all or parts of his meal periods preparing orders to meet customer demands.

Additionally, DUKES's company-wide timekeeping system prevented Mr. Rosas and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Rosas and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, DUKES's timekeeping system prevented Mr. Rosas and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

DUKES knew or should have known that as a result of these company-wide practices and/or policies, Mr. Rosas and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Rosas and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Rosas and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, DUKES did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DUKES paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DUKES failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, DUKES failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Rosas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum

so fixed is unlawful. Compensable work time is defined in 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(2)(K) (defining “Hours Worked”).

As stated above, due to DUKES’s company-wide practice of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Rosas and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, DUKES systematically failed to pay Mr. Rosas and other aggrieved employees for actual hours worked during unpaid meal periods, because DUKES’s timekeeping system locked out Mr. Rosas and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, DUKES did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, DUKES did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, DUKES regularly failed to pay at least minimum wages to Mr. Rosas and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Rosas and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, DUKES had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations due to labor budgeting, which, combined with heavy workloads and failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Mr. Rosas and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Rosas and other aggrieved employees suffered missed, late, and/or interrupted meal periods. Moreover, as described

above, DUKES implemented an electronic timekeeping system that locked Mr. Rosas and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of DUKES's timekeeping system, Mr. Rosas and other aggrieved employees were prevented from accurately recording meal period start and stop times on days when they had meal periods that were cut short and/or interrupted.

DUKES's practice of labor budgeting, resultant understaffing, failure to schedule meal periods, and lack of adequate meal period coverage prevented Mr. Rosas and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Rosas and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Mr. Rosas would miss his meal periods once per month or have them interrupted or cut short at least once per week, due to a lack of coverage and heavy workload; Mr. Rosas would also be required to take his meal periods late, e.g., after his sixth hour of work, approximately once per week for the same reasons.

In addition, during the relevant time period, other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Rosas and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, DUKES implemented a company-wide policy of requiring all employees, including Mr. Rosas and other aggrieved employees, to sign blanket meal period waivers. DUKES took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment. DUKES's company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Rosas and other aggrieved employees from taking all meal periods to which they were entitled.

DUKES knew or should have known that as a result of its non-compliant policies and practices, that Mr. Rosas and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DUKES further knew or should have known that it did not pay Mr. Rosas and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, DUKES engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Rosas and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that DUKES did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, DUKES did not pay other aggrieved employees at the correct rate of pay for premium wages because DUKES systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DUKES failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rosas and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, DUKES regularly failed to authorize and permit Mr. Rosas and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DUKES's company-wide practices, including utilization of labor budgets, resultant understaffing, and assignment of heavy workloads, prevented Mr. Rosas and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, DUKES also failed to schedule rest periods, which, coupled with DUKES's failure to provide adequate rest period coverage, further led to Mr. Rosas and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, DUKES maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Rosas and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Rosas and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, DUKES effectively maintained control over Mr. Rosas and other aggrieved employees during rest periods.

As a result, Mr. Rosas and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Rosas missed his 10-minute rest periods due to his workload, failure to schedule rest periods, and a lack of rest period coverage.

DUKES also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that DUKES did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DUKES did not pay other aggrieved employees at the correct rate of pay for premium wages because DUKES failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, DUKES failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rosas and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DUKES has not provided Mr. Rosas and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, 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).

During the relevant time period, DUKES has knowingly and intentionally provided Mr. Rosas and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DUKES issued uniform wage statements to Mr. Rosas and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, DUKES violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because DUKES did not record the time Mr. Rosas and other aggrieved employees spent working off-the-clock, DUKES did not list the correct amount of gross wages and net wages earned by Mr. Rosas and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DUKES failed to accurately list the total number of hours worked by Mr. Rosas and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because DUKES did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, DUKES did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, DUKES also failed to list the correct amount of net wages in violation of section 226(a)(5). DUKES 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).

Third, and separate from these violations, DUKES issued uniform wage statements to Mr. Rosas and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain

unemployment benefits, etc. Mr. Rosas's and other aggrieved employees' wage statements incorrectly list the employer as "DUKES SURF CITY LP" but, according to the California Secretary of State's website, there is no such entity by the name "DUKES SURF CITY LP." Mr. Rosas believes that the correct employing entity that should be listed on employees' wage statements is "DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP." See *example paystub below*.

Earnings	Rate	Hours/Units	Current Period	Year to Date
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The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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 “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), DUKES willfully failed to maintain accurate payroll records for Mr. Rosas and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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 to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DUKES failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Rosas and other aggrieved employees, in violation of section 1198. Furthermore, in light of DUKES's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DUKES kept no records of meal start and end times for second meal periods.

Because DUKES failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rosas 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. Instead, Mr. Rosas and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Rosas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California 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. California 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, California 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 (7) calendar days following the close of the payroll period.

During the relevant time period, DUKES failed to pay Mr. Rosas and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Rosas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 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 his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

DUKES willfully failed to pay Mr. Rosas and other aggrieved employees who are no longer employed by DUKES all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving DUKES's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Rosas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer’s business in the purchase of a company-provided good.

DUKES had a company-wide policy of requiring employees to purchase uniform items directly from the company. Upon information and belief, other aggrieved employees were required to pay for uniform items, including black uniform hats bearing DUKES’s logo. For example, other aggrieved employees were required to wear a hat for work, as part of their DUKES uniforms, but would only be provided one hat, requiring them to purchase replacements from DUKES as needed.

DUKES’s conduct of compelling and/or coercing other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

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.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

DUKES’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. DUKES could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, as set forth herein, DUKES systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

DUKES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. DUKES's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of DUKES's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. DUKES's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DUKES into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

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." California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen 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."

The IWC states that section 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during "lulls in operation." *Id.*

As stated, DUKES's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Rosas and other aggrieved employees during lulls in operation. DUKES could provide Mr. Rosas and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Rosas and other aggrieved employees to stand throughout the day.

DUKES did not provide Mr. Rosas and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Rosas and other aggrieved employees engaged in duties in which the nature of the work required standing, DUKES denied them the use of seats nearby during lulls in their work duties. Moreover, DUKES did not inform Mr. Rosas and other aggrieved employees of their rights to a seat or stool under California law.

As a result of DUKES's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Rosas and other aggrieved employees were forced to stand during shifts and denied seats. DUKES's failure to provide suitable seating to Mr. Rosas and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Rosas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DUKES into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach 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.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

Upon information and belief, DUKES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because DUKES failed to pay Mr. Rosas and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

During the relevant period, DUKES had a company-wide practice of sending Mr. Rosas and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Rosas and other aggrieved employees for half of their scheduled shift. Although Mr. Rosas and other aggrieved employees would report to work based on the schedule that DUKES provided to them, DUKES would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, Mr.

Rosas would report to work but would be sent home after an hour by DUKES's management because work was slow, yet was not paid for half of his scheduled shift. Accordingly, Mr. Rosas and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Rosas and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 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 section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, DUKES had a company-wide policy of requiring Mr. Rosas and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but DUKES failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Rosas and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with supervisors regarding work-related matters. For example, Mr. Rosas was required to call his supervisor on his personal cellular phone to alert him about food product and supplies that needed to be replenished. Although DUKES required Mr. Rosas and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, DUKES failed to reimburse them for this cost.

Second, during the relevant time period, DUKES, on a company-wide basis, forced Mr. Rosas and other aggrieved employees to purchase basic supplies and tools that were necessary for completion of their work-related duties. For example, Mr. Rosas was required to purchase knives, spoons, and thermometers in order to perform his job duties in the kitchen. Although DUKES required Mr. Rosas and other aggrieved employees to purchase and use their own supplies and tools for work, DUKES did not reimburse them for these expenses.

Third, DUKES, on a company-wide basis, expected Mr. Rosas and other aggrieved employees to report to work in clean and presentable uniforms, including a uniform black hat emblazoned with DUKES's logo, but only provided their employees with one set of uniform items. Thus, DUKES failed to provide Mr. Rosas and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing Mr. Rosas and other aggrieved employees to pay out-of-pocket for some of their uniform components. For example, Mr. Rosas was required to purchase a replacement black hat with stitched with DUKES's logo. Since DUKES did not provide an adequate number of uniform components to all employees, Mr. Rosas and other aggrieved employees were required to purchase additional uniform items, such as hats, directly from DUKES, and were not reimbursed for these costs.

DUKES could have provided Mr. Rosas and other aggrieved employees with the actual tools required for use on the job, such as company phones, supplies and tools, and uniforms. Or, DUKES could have reimbursed employees for their cellular phone expenses, supplies and tools costs, and uniform replacements. Instead, DUKES passed these operating costs off onto Mr. Rosas and other aggrieved employees. At all relevant times, Mr. Rosas and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, DUKES had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Rosas and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

DUKES failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). DUKES's failure to provide other aggrieved employees with written notice of basic information regarding their employment with DUKES is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." 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." DUKES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Rosas's and other aggrieved employees' rights by violating various sections of the

California Labor Code.

Accordingly, Mr. Rosas seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rosas, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against DUKES for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Rosas seeks all applicable civil penalties 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:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP (via U.S. Certified Mail); TS ALOHA, INC. (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,
Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

5 On **April 30, 2021**, I served the document(s) described as:

6 **FIRST AMENDED COMPLAINT**

on the interested parties in this action by sending ☐ the original ☒ a true copy thereof
7 ☐ to interested parties as follows ☐ ☒ as stated on the attached service list:

8 SEYFARTH SHAW LLP
Laura Wilson Shelby (SBN 151870)
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9 Leo Q. Li (SBN 293539)
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10 Los Angeles, California 90067-3021
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11 Facsimile: (310) 201-5219

12 Attorneys for Defendants

13 DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP; TS
ALOHA, INC.

14 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
15 for mailing in the ordinary course of business at Los Angeles, California. I am "readily
familiar" with this firm's practice of collection and processing correspondence for
16 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
Service that same day in the ordinary course of business with postage thereon fully
prepaid at Los Angeles, California.

17 ☒ **BY CASE ANYWHERE:** I hereby certify that a true and correct copy was
18 electronically served on counsel of record by transmission to CASE ANYWHERE.

19 ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
20 collection and processing correspondence for overnight delivery. Under that practice,
overnight packages are enclosed in a sealed envelope with a packing slip attached
thereto fully prepaid. The packages are picked up by the carrier at our offices or
21 delivered by our office to a designated collection site.

22 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

23 Executed this **April 30, 2021**, at Los Angeles, California.

24 Matthew Krout
25 Type or Print Name

Signature 