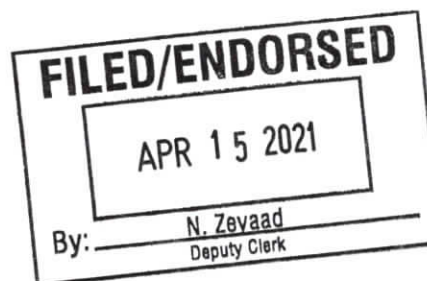


1 Robert Drexler (SBN 119119)
 2 Robert.Drexler@CapstoneLawyers.com
 3 Molly DeSario (SBN 230763)
 4 Molly.DeSario@CapstoneLawyers.com
 5 Jonathan Lee (SBN 267146)
 6 Jonathan.Lee@CapstoneLawyers.com
 7 Capstone Law APC
 8 1875 Century Park East, Suite 1000
 9 Los Angeles, California 90067
 10 Telephone: (310) 556-4811
 11 Facsimile: (310) 943-0396



12 Attorneys for Plaintiffs Donna Marshall, Adam Eastham and Jimmy Aguilar

13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO

12 DONNA MARSHALL, ADAM EASTHAM
 13 and JIMMY AGUILAR, individually, and
 14 on behalf of other members of the general
 15 public similarly situated, and as aggrieved
 16 employees pursuant to the California Labor
 17 Code Private Attorneys General Act
 18 ("PAGA"),

19 Plaintiffs,

20 vs.

21 FANEUIL, INC., a Delaware corporation;
 22 ALJ REGIONAL HOLDINGS, INC., a
 23 Delaware corporation; and DOES 1 through
 24 10, inclusive,

25 Defendants.

Case No.: 34-2017-00216580-CU-OE-GDS

**SECOND AMENDED CLASS ACTION
 COMPLAINT**

- (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), and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code § 226.7 and 1198 (Failure to Provide 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 §§ 226, 432, and 1198.5 (Failure to Produce Employment Records);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices);
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices); and

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

(11) Civil Penalties for Violations of
California Labor Code, pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiffs Donna Marshall, Adam Eastham, and Jimmy Aguilar (“Plaintiffs”),
2 individually, and on behalf of all other members of the public similarly situated, and as
3 aggrieved employees and on behalf of all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

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

19 2. This Court has jurisdiction over all Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice.

24 3. Venue is proper in this Court, because Defendants employ persons in this
25 county, employed Plaintiff Marshall in this county, and thus a substantial portion of the
26 transactions and occurrences related to this action occurred in this county. Cal. Civ. Proc.
27 Code § 395.
28

1 **THE PARTIES**

2 4. Plaintiff DONNA MARSHALL is a resident of Carmichael, in Sacramento
3 County, California. Defendants employed Plaintiff Marshall as an hourly, non-exempt
4 Service Center Representative and Supervisor from approximately November 2014 to
5 December 2016. Plaintiff Marshall worked for Defendants at their call center in
6 Greenhaven, California. As a full-time employee, Plaintiff Marshall regularly worked
7 approximately 8-10 hours per day, 5 days per week, and approximately 40-50 hours per week.
8 At the time Plaintiff Marshall's employment with Defendants ended, she earned
9 approximately \$16 per hour. Plaintiff Marshall's job duties included answering calls from
10 prospective Covered California enrollees and walking them through the enrollment process,
11 supervising a team of Service Center Representatives (providing motivational tools/incentives,
12 tracking performance/progress, provide instruction/assistance) and performing closing
13 procedures, such as shutting down workstations, cleaning workstations, securing doors and
14 windows.

15 5. Plaintiff ADAM EASTHAM is a resident of San Clemente, California.
16 Defendants employed Plaintiff Eastham as an hourly, non-exempt Customer Service
17 Representative, Front Desk Agent, and Resolution Specialist from approximately April 2017
18 to January 2018. Plaintiff Eastham worked for Defendants at their call center in San
19 Clemente, California. As a full-time employee, Plaintiff Eastham regularly worked
20 approximately 8 or more hours per day, 5-6 days per week, and approximately 40-50 hours
21 per week. At the time Plaintiff Eastham's employment with Defendants ended, he earned
22 approximately \$16.56 per hour. Plaintiff Eastham's job duties included receiving and
23 responding to customer calls and providing customer service, managing the front desk,
24 providing customer service to walk-in customers, and arranging customer payment plans to
25 bring customer accounts current.

26 6. Plaintiff JIMMY AGUILAR is a resident of Long Beach, California.
27 Defendants employed Plaintiff Aguilar as an hourly, non-exempt Payment Processor from
28 approximately May 2018 to the present. Plaintiff Aguilar worked for Defendants at their call

1 center in Irvine, California. As a full-time employee, Plaintiff Aguilar regularly worked
2 approximately eight or more hours per day, five days per week, and approximately 40 per
3 week with occasional overtime. Plaintiff's hourly wage is approximately \$15.00 per hour.
4 Plaintiff Aguilar's job duties included handling customer calls, processing payments, updating
5 account information, processing mail regarding customer accounts and handling applications
6 for transponders.

7 7. Defendant FANEUIL, INC. was and is, upon information and belief, a
8 Delaware corporation doing business in California, with its principal place of business in
9 Hampton, Virginia, and at all times hereinafter mentioned, an employer whose employees are
10 engaged throughout this county, the State of California, or the various states of the United
11 States of America.

12 8. Defendant ALJ REGIONAL HOLDINGS, INC. was and is, upon information
13 and belief, a Delaware corporation which is not registered to do business in California, and
14 has its principal place of business in New York City, New York, and at all times hereinafter
15 mentioned, an employer whose employees are engaged throughout this county, the State of
16 California, or the various states of the United States of America.

17 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
18 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
19 amend the complaint and serve such fictitiously named Defendants once their names and
20 capacities become known.

21 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
22 are the partners, agents, owners, shareholders, managers, or employees of FANEUIL, INC.
23 and ALJ REGIONAL HOLDINGS, INC. at all relevant times.

24 11. FANEUIL, INC. is a wholly-owned subsidiary of ALJ REGIONAL
25 HOLDINGS, INC.

26 12. Upon information and belief, ALJ REGIONAL HOLDINGS, INC. is listed as
27 the legal employer of FANEUIL, INC. employees with the California Employment
28 Development Department.

1 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
2 acts and omissions alleged herein were performed by, or were attributable to, FANEUIL,
3 INC.; ALJ REGIONAL HOLDINGS, INC.; and/or DOES 1 through 10 (collectively
4 “Defendants” or “FANEUIL”), each acting as the agent, employee, alter ego, and/or joint
5 venturer of, or working in concert with, each of the other co-Defendants and were acting
6 within the course and scope of such agency, employment, joint venture, or concerted activity
7 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
8 accordance with, and represent, the official policy of Defendants.

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

13 15. Plaintiffs are informed and believe, and thereon allege, that each of said
14 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
15 omissions, occurrences, and transactions alleged herein.

16 16. Under California law, Defendants are jointly and severally liable as employers
17 for the violations alleged herein because they have each exercised sufficient control over the
18 wages, hours, working conditions, and employment status of Plaintiffs and class members.
19 Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and
20 controlled their work schedule and/or conditions of employment, determined their rate of pay,
21 and maintained their employment records. Defendants suffered or permitted Plaintiffs and
22 class members to work and/or “engaged” Plaintiffs and class members so as to create a
23 common law employment relationship. As joint employers of Plaintiffs and class members,
24 Defendants are jointly and severally liable for the civil penalties and all other relief available
25 to Plaintiffs and class members under the law.

26 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant
27 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
28 and class members because Defendants have:

- 1 a) jointly exercised meaningful control over the work performed by Plaintiffs
2 and class members;
- 3 b) jointly exercised meaningful control over Plaintiffs and class members’
4 wages, hours, and working conditions, including the quantity, quality
5 standards, speed, scheduling, and operative details of the tasks performed
6 by Plaintiffs and class members;
- 7 c) jointly required that Plaintiffs and class members perform work which is
8 an integral part of Defendants’ businesses; and
- 9 d) jointly exercised control over Plaintiffs and class members as a matter of
10 economic reality in that Plaintiffs and class members were dependent on
11 Defendants, who shared the power to set the wages of Plaintiffs and class
12 members and determine their working conditions, and who jointly reaped
13 the benefits from the underpayment of their wages and noncompliance
14 with other statutory provisions governing their employment.

15 18. Plaintiffs are informed and believe, and further allege, that at all relevant times
16 there has existed a unity of interest and ownership between Defendants such that any
17 individuality and separateness between the entities has ceased.

18 19. FANEUIL, INC.; ALJ REGIONAL HOLDINGS, INC.; and DOES 1-10 are
19 therefore alter egos of each other.

20 20. Adherence to the fiction of the separate existence of Defendants would permit
21 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
22 from liability for the wrongful acts committed by it under the name FANEUIL.

23 **CLASS ACTION ALLEGATIONS**

24 21. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
25 all other persons similarly situated, and thus seek class certification under California Code of
26 Civil Procedure section 382.

27 22. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 23. Plaintiffs' proposed class consists of and is defined as follows:

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

4 24. Plaintiffs' proposed subclass consists of and is defined as follows:

5 All persons who worked for Defendants as nonexempt, hourly-
6 paid employees in California, within one year prior to the filing
 of this complaint until the date of trial ("One-Year Subclass").

7 25. Members of the Class and Subclass are referred to herein as "class members."

8 26. Plaintiffs reserve the right to redefine the Class and to add additional subclasses
9 as appropriate based on further investigation, discovery, and specific theories of liability.

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

- 12 (a) Whether Defendants required Plaintiffs and class members to work over
13 eight (8) hours per day, over twelve (12) hours per day, or over forty
14 (40) hours per week and failed to pay all legally required overtime
15 compensation to Plaintiffs and class members;
- 16 (b) Whether Defendants failed to properly calculate the "regular rate" of
17 pay on which Plaintiffs and class members' overtime rate of pay was
18 based;
- 19 (c) Whether Defendants failed to pay Plaintiffs and class members at least
20 minimum wages for all hours worked;
- 21 (d) Whether Defendants failed to provide Plaintiffs and class members with
22 meal periods;
- 23 (e) Whether Defendants failed to provide Plaintiffs and class members with
24 rest periods;
- 25 (f) Whether Defendants provided Plaintiffs and class members with
26 complete and accurate wage statements as required by California Labor
27 Code section 226(a);
- 28 (g) Whether Defendants failed to produce copies or allow inspection of

employees' own personnel and other employment records upon written request within the statutory time limits;

- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiffs and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premiums to Plaintiffs and class members during their employment;
- (j) Whether Defendants required Plaintiffs and class members to utilize payroll debit cards that charged fees, resulting in a discount of their wages;
- (k) Whether Defendants failed to provide Plaintiffs and class members with written notice on wage statements listing requisite sick pay information set forth in Labor Code section 246(i);
- (l) Whether Defendants reimbursed Plaintiffs and class members for business-related expenses they incurred as a result of their employment;
- (m) Whether Defendants failed to provide written notice of information material to Plaintiffs and class members' employment with Defendants;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is

1 estimated to be greater than one hundred (100) individuals and the
2 identity of such membership is readily ascertainable by inspection of
3 Defendants' employment records.

4 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
5 protect the interests of each class member with whom they have a well-
6 defined community of interest, and Plaintiffs' claims (or defenses, if
7 any) are typical of all class members as demonstrated herein.

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

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

25 (e) Public Policy Considerations: Employers in the State of California
26 violate employment and labor laws every day. Current employees are
27 often afraid to assert their rights out of fear of direct or indirect
28 retaliation. Former employees are fearful of bringing actions because

1 they believe their former employers might damage their future
2 endeavors through negative references and/or other means. Class
3 actions provide the class members who are not named in the complaint
4 with a type of anonymity that allows for the vindication of their rights
5 while simultaneously protecting their privacy.

6 **GENERAL ALLEGATIONS**

7 29. Defendants are Delaware corporations that provide business process
8 outsourcing solutions, including customer service call centers, to companies across the United
9 States. Upon information and belief, Defendants maintain a single, centralized Human
10 Resources department at their corporate headquarters in Hampton, Virginia, which is
11 responsible for conducting Defendants' recruiting and hiring of new employees, as well as
12 communicating and implementing Defendants' company-wide policies to employees
13 throughout California.

14 30. Defendants continue to employ non-exempt or hourly-paid employees
15 throughout California.

16 31. Plaintiffs are informed and believe, and thereon allege, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
18 and advisors knowledgeable about California labor and wage law, employment and personnel
19 practices, and about the requirements of California law.

20 32. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
21 members were not paid for all hours worked because all hours worked were not recorded.

22 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to receive certain wages
24 for overtime compensation and that they were not receiving certain wages for overtime
25 compensation.

26 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and class members were entitled to be paid at a regular rate
28 of pay, and corresponding overtime rate of pay, that included as eligible income all income

1 derived from bonus pay, commissions, and/or incentive pay.

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

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

15 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to rest periods in
17 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
18 additional hour of pay at their regular rates of pay when they were not provided with a
19 compliant rest period and that Plaintiffs and class members were not provided compliant rest
20 periods or payment of one (1) additional hour of pay at their regular rates of pay when they
21 were not provided a compliant rest period.

22 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to receive complete and
24 accurate wage statements in accordance with California law. In violation of the California
25 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
26 statements.

27 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
2 and intentionally failed to do so.

3 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that they were required to comply with requests from Plaintiffs and class
5 members to inspect or receive a copy of their wage records within 21 days in accordance with
6 the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally
7 failed to do so.

8 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to receive copies of
10 instruments that they signed upon request. In violation of the California Labor Code,
11 Defendants denied Plaintiffs and class members their right to obtain copies of instruments that
12 they signed.

13 42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and class members were entitled to receive copies of their
15 personnel records no later than 30 days from the date Defendants receive a written request. In
16 violation of the California Labor Code, Defendants denied Plaintiffs and class members their
17 right to obtain copies of their personnel records within the statutory time limits

18 43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiffs and class members did not receive payment of all wages due, including, but not
22 limited to, overtime wages, minimum wages, and meal and rest period premiums, within
23 permissible time periods.

24 44. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to timely payment of
26 wages during their employment. In violation of the California Labor Code, Plaintiffs and
27 class members did not receive payment of all wages, including, but not limited to, overtime
28 wages, minimum wages, and meal and rest period premiums, within permissible time periods.

1 45. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that they were prohibited from requiring Plaintiffs and class members to
3 utilize payroll debit cards that charged fees, resulting in a discount of their wages, but did so
4 anyway.

5 46. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to written notice of paid
7 sick leave or paid time off available. In violation of the California Labor Code, Defendants
8 did not provide Plaintiffs and class members with written notice of paid sick leave or paid
9 time off available, within permissible time periods.

10 47. Plaintiffs are informed and believe, and thereon allege, that Defendants knew
11 or should have known that Plaintiffs and class members were entitled to receive full
12 reimbursement for all business-related expenses and costs they incurred during the course and
13 scope of their employment, and that they did not receive full reimbursement of applicable
14 business-related expenses and costs they incurred.

15 48. Plaintiffs are informed and believe, and thereon allege, that at all times herein
16 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiffs
17 and class members with written notice of the material terms of their employment with
18 Defendants as required by the California Wage Theft Prevention Act, but willfully,
19 knowingly, and intentionally failed to do so.

20 49. Plaintiffs are informed and believe, and thereon allege, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to compensate
22 Plaintiffs and class members for all hours worked, and that Defendants had the financial
23 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
24 and falsely represented to Plaintiffs and class members that they were properly denied wages,
25 all in order to increase Defendants' profits.

26 50. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the LWDA for violations of the California Labor Code and

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

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

7 52. Plaintiff Aguilar and other current and former employees of Defendants are
8 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
9 Defendants’ current or former employees and one or more of the alleged violations were
10 committed against them.

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

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

1 to California Labor Code section 2699 to recover civil penalties.

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

- 6 (a) The aggrieved employee or representative shall give written notice by
7 online filing with the LWDA and by certified mail to the employer of
8 the specific provisions of the California Labor Code alleged to have
9 been violated (other than those listed in Section 2699.5), including the
10 facts and theories to support the alleged violation.
- 11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).
- 14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice sent by the aggrieved
16 employee or representative. The employer shall give written notice
17 within that period of time by certified mail to the aggrieved employee or
18 representative and by online filing with the LWDA if the alleged
19 violation is cured, including a description of actions taken, and no civil
20 action pursuant to Section 2699 may commence. If the alleged violation
21 is not cured within the 33-day period, the aggrieved employee may
22 commence a civil action pursuant to Section 2699.

23 55. December 3, 2020, Plaintiff Aguilar provided written notice by online filing to
24 the LWDA and by certified mail to Defendants of the specific provisions of the California
25 Labor Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff Aguilar's
27 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
28 The LWDA PAGA Administrator confirmed receipt of Plaintiff Aguilar's written notice and

1 assigned Plaintiff Aguilar PAGA Case Number LWDA-CM- 814288-20.

2 56. A true and correct copy of Plaintiff Aguilar's written notice to the LWDA and
3 Defendants dated December 3, 2020, is attached hereto as "Exhibit 1."

4 57. As of the filing date of this complaint, over 65 days have passed since Plaintiff
5 Aguilar sent his LWDA notice described above, and the LWDA has not responded that it
6 intends to investigate Plaintiff Aguilar's claims and Defendants have not cured the violations.

7 58. Thus, Plaintiff Aguilar has satisfied the administrative prerequisites under
8 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against
9 Defendants, in addition to other remedies, for violations of California Labor Code sections
10 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226(b), 226.7, 246, 432, 510, 512(a), 516,
11 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

12 59. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
18 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
19 period for which the employee was underpaid in addition to an amount sufficient to recover
20 underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided for in
21 this section are in addition to any other civil or criminal penalty provided by law."

22 60. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff Aguilar's and other non-party
24 Aggrieved Employees' rights by violating various sections of the California Labor Code as set
25 forth above.

26 61. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

1 Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
2 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff Aguilar, acting in the public interest as
3 a private attorney general, seek assessment and collection of civil penalties for themselves, all
4 other aggrieved employees, and the State of California against Defendants, in addition to other
5 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221,
6 223, 224, 226(a), 226(b), 226.7, 246, 432, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194,
7 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

8 **FIRST CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

10 **(Against all Defendants)**

11 62. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
12 and every allegation set forth above.

13 63. California Labor Code section 1198 makes it illegal to employ an employee
14 under conditions of labor that are prohibited by the applicable wage order. California Labor
15 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
16 shall 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 64. 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. An employee’s regular rate
22 of pay includes all remuneration for employment paid to, or on behalf of, the employee,
23 including non-discretionary bonuses and/or incentive pay.

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

1 66. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
3 overtime compensation at a rate of two (2) times their regular rate of pay, and required to pay
4 Plaintiffs and class members at a rate of two (2) times their regular rate of pay for hours
5 worked in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a
6 workweek. An employee's regular rate of pay includes all remuneration for employment paid
7 to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

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

19 69. At all relevant times, Defendants have, on a company-wide basis, maintained a
20 policy prohibiting employees from clocking in prior to the start of their scheduled shifts. As a
21 result, Plaintiffs and class members were required to work off-the-clock before their shifts. In
22 order to begin their shift on time, an employee would have to arrive to the call center 5-10
23 minutes before their scheduled start time, sit at their workstation and start up their computer,
24 open the online timekeeping application, and then wait until their scheduled start time before
25 they could clock in.

26 70. Additionally, Defendants systematically, and on a company-wide basis, failed
27 to schedule second meal periods and had no policy for permitting and authorizing Plaintiffs
28 and class members to take second 30-minute meal periods on days that they worked in excess

1 of 10 hours in one day. Plaintiffs and class members sometimes worked 12 hours per day or
2 more, but did not receive a second uninterrupted 30-minute meal period on those days.
3 Plaintiffs and class members did not sign valid meal break waivers on days that they were
4 entitled to meal periods but were not relieved of all duties.

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

14 72. Furthermore, Defendants did not pay Plaintiffs and class members the correct
15 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
16 wage, Defendants paid Plaintiffs and class members incentive pay and/or nondiscretionary
17 bonuses. However, in violation of the California Labor Code, Defendants failed to
18 incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into
19 the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
20 Therefore, during times when Plaintiffs and class members worked overtime and received
21 these other forms of pay, Defendants failed to pay all overtime wages by paying a lower
22 overtime rate than required.

23 73. For example, during the relevant time period, Defendants paid Plaintiffs and
24 class members non-discretionary bonus pay upon reaching productivity milestones. During
25 the relevant time period, Plaintiffs and class members earned nondiscretionary bonuses in the
26 same pay periods in which they earned overtime wages. However, Defendants failed to
27 incorporate these other forms of pay into Plaintiffs' and class members' regular rate of pay
28 and, as a result, paid them at an incorrect and lower rate of pay for overtime hours worked.

Specifically, for example, Defendants paid Plaintiff Marshall at 1.5 times her hourly rate of pay instead of at 1.5 times her regular rate of pay. Defendants' failure to properly calculate the overtime rate of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiffs and class members.

74. Defendants' failure to pay Plaintiffs and class members the balance of overtime compensation and failure to include all applicable remuneration in calculating the regular rate of pay for overtime pay, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorney's fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against All Defendants)

75. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 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, § 11040(2)(K) (defining "Hours Worked").

77. As set forth above, due to Defendants' clock-in policy, whereby employees were prohibited from clocking in prior to their scheduled start time, Plaintiffs and class members were forced to work off-the-clock before the start of their shifts. Defendants also required Plaintiffs and class members to work during their second 30-minute unpaid meal periods due to Defendants' systemic and company-wide failure to schedule second meal

1 periods for its employees. Defendants also did not pay minimum wages for second meal
2 periods Plaintiffs and class members worked through that qualified for overtime premium
3 payment.

4 78. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
5 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
6 hours did not qualify for overtime premium payment, Defendants did not pay at least
7 minimum wages for those hours worked off-the-clock in violation of California Labor Code
8 sections 1182.12, 1194, 1197, 1197.1, and 1198.

9 79. Defendants' failure to pay Plaintiffs and class members minimum wages
10 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
11 California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code, §§ 226.7, 512(a), and 1198—Meal Period Violations** 15 **(Against all Defendants)**

16 80. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
17 and every allegation set forth above.

18 81. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
19 California Labor Code sections 226.7, 512(a) and 1198 were applicable to Plaintiffs and class
20 members' employment by Defendants.

21 82. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
28 2012).

1 83. At all relevant times herein set forth, California Labor Code section 226.7 and
2 512(a) provide that no employer shall require an employee to work during any meal period
3 mandated by an applicable order of the IWC.

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

10 85. During the relevant time period, Defendants' company-wide understaffing of
11 call centers, failure to provide sufficient meal break coverage, and failure to schedule second
12 meal periods prevented Plaintiffs and class members from taking compliant meal periods.
13 Defendants required Supervisors to always be present and on the call center floor to avoid any
14 lapse in coverage. However, Defendants' management provided insufficient coverage for
15 supervisory employees to take their meal periods, resulting in Plaintiffs and class members
16 taking late meal periods because they could not leave the floor unattended.

17 86. As a result of these practices and/or policies, Plaintiffs and class members were
18 frequently required to continue to perform their duties without being able to take a timely,
19 compliant meal period. Thus, Plaintiffs and class members had to wait extended periods of
20 time before taking meal periods. For example, within the relevant time period, Plaintiff
21 Marshall typically worked 6.5 hours without being relieved of her duties to take a meal period.
22 Furthermore, Defendants did not provide Plaintiffs and class members with second 30-minute
23 meal periods on days that they worked in excess of 10 hours in one day. As stated, Plaintiffs
24 sometimes worked over 10-hour shifts without being permitted or authorized to take a second
25 30-minute meal period.

26 87. Defendants knew or should have known that as a result of these policies,
27 Plaintiffs and class members were prevented from being relieved of all duties and required to
28 perform some of their assigned duties during meal periods and that Defendants' did not pay

1 Plaintiffs and class members all meal period premium wages when they were missed,
2 interrupted by work, or taken late. Plaintiffs and class members did not sign valid meal break
3 waivers on days that they were entitled to meal periods and were not relieved of all duties.

4 88. Moreover, Defendants engaged in a systematic, company-wide policy to not
5 pay meal period premiums for Plaintiffs and class members, regardless of whether they were
6 able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor
7 Code sections 226.7 and 512(a). Alternatively, to the extent that Defendants did pay Plaintiffs
8 and class members one (1) additional hour of premium pay for missed meal periods,
9 Defendants did not pay Plaintiffs and class members at the correct rate of pay for premium
10 wages because Defendants failed to include all forms of compensation, such as incentive pay
11 and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent
12 Defendants paid Plaintiffs and class members premium pay for missed meal periods, it did so
13 at a lower rate than required by law. As a result, Defendants failed to provide Plaintiffs and
14 class members compliant meal periods in violation of California Labor Code sections 226.7
15 and 512 and failed to pay the full meal period premiums due.

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

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code § 226.7 and 1198—Rest Break Violations** 22 **(Against all Defendants)**

23 90. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
24 and every allegation set forth above.

25 91. At all relevant times herein set forth, the applicable IWC Wage Order and
26 California Labor Code sections 226.7 and 1198 were applicable to Plaintiffs and class
27 members' employment by Defendants.

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

1 employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half
5 (3½) hours.

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

17 94. During the relevant time period, Defendants’ scheduling policies and practices
18 prevented Plaintiffs and class members from taking 10-minute rest periods. As mentioned
19 above, Defendants have, and continue to have, a company-wide policy of requiring that a
20 Supervisor always be present and on the call center floor. However, Defendants’ management
21 would provide no coverage for supervisory employees to take their rest periods. Plaintiffs
22 would work shifts in excess of three and one-half (3 ½) hours, in excess of six (6) hours,
23 and/or in excess of ten (10) hours without receiving all uninterrupted 10-minute rest periods to
24 which they were entitled. For example, Plaintiff Marshall worked 8 to 10 hours per shift and
25 missed her rest periods, because she had to remain on duty to monitor the customer service
26 representatives, and she was the only Supervisor on duty for at least two hours of every shift.

27 95. Defendants also had a company-wide policy of limiting employees to two rest
28 periods per shift, regardless of how many hours they work. For example, Plaintiffs and class

1 members worked shifts of 10 hours or more, but were not permitted to take the additional rest
2 breaks to which they were entitled.

3 96. At the same time, Defendants implemented a systematic, company-wide policy
4 to not pay rest periods premiums. Alternatively, to the extent that Defendants did pay
5 Plaintiffs and class members one (1) additional hour of premium pay for missed rest periods,
6 Defendants did not pay Plaintiffs and class members at the correct rate of pay for premium
7 wages because Defendants failed to include all forms of compensation, such as incentive pay
8 and/or nondiscretionary bonuses, in the regular rate of pay. As a result, Plaintiffs and class
9 members were denied rest periods and failed to pay the full rest period premiums due, in
10 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

11 97. Defendants' conduct violates the applicable IWC Wage Order and California
12 Labor Code sections 226.7 and 1198. Plaintiffs and class members are therefore entitled to
13 recover from Defendants one (1) additional hour of pay at the employee's regular rate of
14 compensation for each work day that the rest period was not provided and the balance owed
15 for underpaid separately compensated rest periods.

16 **FIFTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage** 18 **Statements and Failure to Maintain Accurate Payroll Records** 19 **(Against all Defendants)**

20 98. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
21 and every allegation set forth above.

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

27 100. At all relevant times herein set forth, Defendants have systematically provided
28 Plaintiffs and One-Year Subclass members with uniform, incomplete, and inaccurate wage

1 statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(5), 226(a)(8), and
2 226(a)(9).

3 101. First, because Defendants did not calculate Plaintiffs' and One-Year Subclass
4 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not
5 list the correct amount of gross wages earned by Plaintiffs and One-Year Subclass members in
6 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
7 amount of net wages earned by Plaintiffs and One-Year Subclass members in violation of
8 section 226(a)(5).

9 102. Second, Defendants also failed to list any applicable hourly rates in effect
10 during the pay period, in violation of section 226(a)(9). For example, on a wage statement
11 issued to Plaintiff Marshall on October 28, 2016, no rates of pay appear whatsoever. Thus,
12 Defendants issued wage statements to Plaintiffs and One-Year Subclass members that do not
13 list any rates of pay.

14 103. Furthermore, Defendants issued uniform wage statements to Plaintiffs and One-
15 Year Subclass members that fail to correctly list the correct name and address for Defendants
16 in violation of Labor Code section 226(a)(8). Defendants issued uniform wage statements to
17 Plaintiffs and One-Year Subclass members that listed "Faneuil, Inc." as the employing entity
18 and "2 Eaton Street, Suite 1002, Hampton, VA, 23669" as the employer's address. Upon
19 information and belief, the true name of the employing entity is "ALJ Regional Holdings,
20 Inc.," whose address is 244 Madison Avenue, PMB #358, New York, NY 10016.

21 104. The wage statement deficiencies also include, among other things, failing to list
22 total hours worked by employees; failing to list the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions;
24 failing to list the name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number;
26 failing to list the inclusive dates of the period for which employees were paid; and/or failing to
27 state all hours worked as a result of not recording or stating the hours they worked off-the-
28 clock.

1 105. California Labor Code section 1174(d) provides that “[e]very person employing
2 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
3 employed and the ages of all minors” and “[keep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or
7 establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500
8 civil penalty if they fail to maintain accurate and complete records as required by section
9 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
10 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and One-Year
11 Subclass members showing the daily hours they worked and the wages paid thereto as a result
12 of failing to record the off-the-clock hours that they worked.

13 106. California Labor Code section 1198 provides that the maximum hours of work
14 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
15 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
16 employment of any employees for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
18 Wage Order, employers are required to keep accurate time records showing when the
19 employee begins and ends each work period and meal period. During the relevant time
20 period, Defendants failed, on a company-wide basis, to keep accurate records of meal period
21 start and stop times for Plaintiffs and One-Year Subclass members, in violation of section
22 1198. Although the Kronos timekeeping system used by Defendants would flag a late clock-
23 out for lunch, a supervisor or manager would manually adjust the entry so that it appeared
24 Plaintiffs and One-Year Subclass members had taken compliant meal period(s), when, in fact,
25 they did not. Further, in light of Defendants’ failure to provide Plaintiffs and One-Year
26 Subclass members with second 30-minute meal periods to which they were entitled,
27 Defendants kept no records of meal start and end times for second meal periods. Moreover,
28 Defendants kept no records of time spent by Plaintiffs and One-Year Subclass members

1 working before their scheduled shifts.

2 107. Plaintiffs and One-Year Subclass members are entitled to recover from
3 Defendants the greater of their actual damages caused by Defendants' failure to comply with
4 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
5 dollars (\$4,000) per employee.

6 **SIXTH CAUSE OF ACTION**

7 **Violation of California Labor Code §§ 226, 432, and 1198.5**

8 **(Against all Defendants)**

9 **Failure to Produce and/or Permit Inspection of Records**

10 108. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
11 and every allegation set forth above.

12 109. At all relevant times herein, California Labor Code section 226(b) provides that
13 every employer shall furnish current and former employees the right to inspect or copy
14 records pertaining to their employment, upon reasonable request to the employer. Labor Code
15 Section 226(c) provides that an employer must comply with a request made pursuant to Labor
16 Code section 226(b) no later than 21 calendar days from the date of the employee's request.

17 110. At all times relevant herein, California Labor Code section 226(f) states "[a]
18 failure by an employer to permit a current or former employee to inspect or copy records
19 within the time set forth in subdivision (c) entitles the current or former employee or the
20 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
21 employer."

22 111. At all times relevant herein, California Labor Code section 226(h) states "[a]n
23 employee may also bring an action for injunctive relief to ensure compliance with this section,
24 and is entitled to an award of costs and reasonable attorney's fees."

25 112. At all times relevant herein, the operative Industrial Welfare Commission Wage
26 Order No. 4-2001, section 7(A), provides "[e]very employer shall keep accurate information
27 with respect to each employee including the following: (1) Full name, home address,
28 occupation and social security number. (2) Birth date, if under 18 years, and designation as a

1 minor. (3) Time records showing when the employee begins and ends each work period. Meal
2 periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods
3 during which operations cease and authorized rest periods need not be recorded. (4) Total
4 wages paid each payroll period, including value of board, lodging, or other compensation
5 actually furnished to the employee. (5) Total hours worked in the payroll period and
6 applicable rates of pay. This information shall be made readily available to the employee upon
7 reasonable request.”

8 113. At all times relevant herein, the operative Industrial Welfare Commission Wage
9 Order No. 4-2001, section 7(C), provides “[a]ll required records shall be in the English
10 language and in ink or other indelible form, properly dated, showing month, day and year, and
11 shall be kept on file by the employer for at least three years at the place of employment or at a
12 central location within the State of California. An employee’s records shall be available for
13 inspection by the employee upon reasonable request.”

14 114. During the relevant time period, Plaintiff Marshall sent Defendants reasonable
15 written requests for documents and records relating to her employment with Defendants.
16 During the relevant time period, Defendants failed to produce for inspection and copying or
17 otherwise permit inspection and copying of documents and records relating to Plaintiff
18 Marshall’s employment.

19 115. For example, on May 31, 2017, Plaintiff Marshall sent a written request to
20 Defendants via FedEx overnight mail. After Plaintiff Marshall did not receive her records,
21 Plaintiff Marshall sent a second written request on June 30, 2017, via facsimile and FedEx
22 overnight mail. On June 1, 2017, and July 3, 2017, respectively, FedEx confirmed Defendants
23 received Plaintiff Marshall’s written requests for records. To date, Defendants have failed to
24 even respond to either of Plaintiff Marshall’s written requests for her records.

25 116. Thus, over 21 days have passed from the date that Plaintiff Marshall sent
26 Defendants reasonable written requests for documents and records relating to her employment
27 and Defendants have failed to comply with the requests in violation of Labor Code section
28 226(b) and the applicable IWC Wage Order.

117. Plaintiffs and class members are therefore entitled to recover statutory penalties of \$750 per employee, injunctive relief, and attorney’s fees and costs, pursuant to section 226(f) and (h).

Failure to Produce Instruments Signed

118. At all times relevant herein, California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

119. At all times relevant herein, California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

120. At all times relevant herein, the operative Industrial Welfare Commission Wage Order No. 4-2001, section 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.”

121. At all times relevant herein, the operative Industrial Welfare Commission Wage Order No. 4-2001, section 7(C), provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

122. As stated, Plaintiff Marshall sent two (2) written letters via FedEx to Defendants requesting a copy of her employment records, including documents she signed,

1 and/or the opportunity to inspect her records. To date, Defendants still have not responded to
2 Plaintiff Marshall's reasonable requests.

3 123. Defendants flat-out refusal to provide Plaintiff Marshall with a copy of her
4 employment application and instruments she signed violates Labor Code section 432 and the
5 applicable IWC Wage Order.

6 **Failure to Produce and/or Permit Inspection of Personnel Records**

7 124. California Labor Code § 1198.5 requires that an employer provide a copy of an
8 employee's personnel record no later than 30 days from the date the employer receives a
9 written request. If an employer fails to satisfy this written request, the former employee may
10 recover a penalty of \$750.00 from the employer. Cal. Lab. Code § 1198.5(k). The former
11 employee may also bring an action for injunctive relief and may recover costs and reasonable
12 attorney's fees. Cal. Lab. Code § 1198.5(l).

13 125. During the relevant time period, Defendants systematically denied Plaintiffs
14 and class members of their right to obtain copies of their personnel files upon written request.
15 For example, on May 31, 2017, and June 30, 2017, Plaintiff Marshall made written requests to
16 Defendants for her personnel file. On June 1, 2017, and July 3, 2017, respectively, FedEx
17 confirmed Defendants received Plaintiff Marshall's written requests for records. Defendants
18 did not comply with their obligation to provide Plaintiff Marshall with a copy of her personnel
19 file. To date, Defendants still have not provided Plaintiff Marshall with a copy of her
20 personnel file or an opportunity to inspect her personnel file. Upon information and belief,
21 Defendants have similarly failed to provide class members with copies of their personnel files
22 upon written request.

23 126. Defendants' failure and/or refusal to produce Plaintiffs' and class members'
24 personnel files within the statutory time limits violates California Labor Code section 1198.5.
25 Plaintiffs and class members are therefore entitled to recover statutory penalties of \$750 per
26 employee, injunctive relief, and attorney's fees and costs, pursuant to section 1198.5 (k) and
27 (l).

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

SEVENTH CAUSE OF ACTION
Violation of California Labor Code §§ 201, 202, and 203 – Wages Not Timely Paid Upon
Termination
(Against all Defendants)

127. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

128. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and meal and rest period premium wages that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

129. At all times relevant herein set forth, Labor Code sections 201 and 202 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.

130. During the relevant time period, Defendants willfully failed to pay Plaintiffs 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, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants’ employ.

131. Defendants’ failure to pay Plaintiffs and those 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. Plaintiffs 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.

1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802 – Failure to Reimburse Business Expenses**
3 **(Against all Defendants)**

4 132. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
5 and every allegation set forth above.

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

17 134. During the relevant time period, Defendants, on a company-wide basis,
18 required that Plaintiffs and class members provide their own office supplies in order to carry
19 out their job duties, but Defendants failed to reimburse them for these costs. For example,
20 Defendants did not provide basic office supplies to Plaintiffs and class members, such as
21 staples, staplers, tape, and post-its. Plaintiff Marshall had to purchase these items for herself
22 and other employees, spending \$25 to \$30 per month, and Defendants failed to reimburse her
23 for this cost.

24 135. Defendants could have provided Plaintiffs and class members with the tools
25 required for use on the job, such as basic office supplies, or reimbursements for their out-of-
26 pocket costs. But instead, Defendants passed these operating costs off onto Plaintiffs and
27 class members.

28 136. Defendants’ company-wide policy and/or practice of passing on its operating

1 costs on to Plaintiffs and class members by requiring that they provide their own basic office
2 supplies for work is in violation of California Labor Code section 2802. Defendants have
3 intentionally and willfully failed to fully reimburse Plaintiffs and class members for necessary
4 business-related expenses.

5 137. Plaintiffs and class members are entitled to recover from Defendants their
6 business-related expenses incurred during the course and scope of their employment, plus
7 interest.

8 **NINTH CAUSE OF ACTION**

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

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

12 138. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
13 and every allegation set forth above.

14 139. Defendants are a “person” as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies
16 and/or associations.

17 140. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
19 suffered injury in fact and have lost money as a result of Defendants’ unlawful business
20 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure section 1021.5.

22 141. Defendants’ activities, as alleged herein, are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business &
24 Professions Code sections 17200, *et seq.*

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

28 (a) Requiring non-exempt employees, including Plaintiffs and class

1 members, to work overtime without paying them proper compensation
2 in violation of California Labor Code sections 510 and 1198 and the
3 applicable IWC Order, as alleged herein;

4 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
5 violation of California Labor Code sections 1182.12, 1194, 1197,
6 1197.1, and 1198 and the applicable IWC Order, as alleged herein;

7 (c) Failing to provide timely meal and rest periods to Plaintiffs and class
8 members in violation of California Labor Code sections 226.7, 512(a),
9 1198, and the applicable IWC Order, as alleged herein;

10 (d) Failing to provide Plaintiffs and class members with accurate wage
11 statements and failing to maintain accurate payroll records in violation
12 of California Labor Code sections 226(a), 1174(d), 1198, and the
13 applicable IWC Order, as alleged herein;

14 (e) Failing timely to pay all earned wages to Plaintiffs and class members in
15 violation of California Labor Code section 204 and the applicable IWC
16 Order, as set forth below;

17 (f) Requiring Plaintiffs and class members to utilize payroll debit cards that
18 charged fees, resulting in a discount of their wages, in violation of
19 California Labor Code section 221;

20 (g) Failing to provide written notice of paid sick leave or paid time off
21 available to Plaintiffs and class members in violation of California
22 Labor Code section 246(i), as set forth below;

23 (h) Failing to reimburse Plaintiffs and class members for all business
24 expenses necessarily incurred in violation of California Labor Code
25 section 2802, as alleged herein; and

26 (i) Failing to provide written notice of information material to Plaintiffs
27 and class members' employment with Defendants in violation of Labor
28 Code section 2810.5(a)(1)(A)-(C), as set forth below.

1 143. At all relevant times herein set forth, California Labor Code section 204
2 requires that all wages earned by any person in any employment between the 1st and the 15th
3 days, inclusive, of any calendar month, other than those wages due upon termination of an
4 employee, are due and payable between the 16th and the 26th day of the month during which
5 the labor was performed. Labor Code section 204 further provides that all wages earned by
6 any person in any employment between the 16th and the last day, inclusive, of any calendar
7 month, other than those wages due upon termination of an employee, are due and payable
8 between the 1st and the 10th day of the following month.

9 144. At all relevant times herein, California Labor Code section 204 also requires
10 that all wages earned for labor in excess of the normal work period shall be paid no later than
11 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
12 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
13 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
14 more than seven (7) calendar days following the close of the payroll period.

15 145. During the relevant time period, Defendants willfully failed to pay Plaintiffs
16 and class members all wages due to them within any time period specified by California Labor
17 Code section 204 including, but not limited to, overtime wages, minimum wages, and meal
18 and/or rest period premium wages. Plaintiffs and class members are therefore entitled to
19 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).
20 Separately, to the extent Defendants did attempt to true-up overtime due to Plaintiffs and class
21 members, Defendants failed to do so within the time limitations set forth in Labor Code
22 section 204.

23 146. At all times relevant herein set forth, California Labor Code section 221
24 provides that it is unlawful for any employer to collect or receive from an employee any part
25 of wages theretofore paid by said employer to said employee.

26 147. During the relevant time period, Defendants provided Plaintiffs and class
27 members with payroll debit cards as payment of their wages. Plaintiffs and class members
28 were required to use automated teller machines (ATMs) to withdraw funds from the payroll

1 debit cards, or they could use the debit cards to make purchases at retailers who accept debit
2 cards. Plaintiffs and class members were required to pay annual fees, per-transaction fees,
3 and ATM fees in order to obtain or spend their earned wages. The fees charged to Plaintiffs
4 and other class members resulted in a discount of their wages. Defendants' company-wide
5 policy and practice of issuing payroll debit cards to Plaintiffs and class members resulting in a
6 discount of their wages violates California Labor Code section 212.

7 148. At all relevant times herein set forth, California Labor Code sections 245.5,
8 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for
9 30 or more days from the commencement of employment with paid sick days, to be accrued at
10 least one hour for every 30 hours worked. Pursuant to California Labor Code section
11 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave
12 (or equivalent paid leave or paid time off) in each year of the employee's employment.
13 Further, section 246(i) provides that an employer must provide an employee with written
14 notice that sets forth the amount of paid sick leave available, or paid time off that an employer
15 provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a
16 separate written statement provided on the designated pay date with the employee's wages.
17 The penalties described in this article for a violation of this subdivision shall be in lieu of the
18 penalties for a violation of Section 226.

19 149. During the relevant time period, Defendants failed to provide Plaintiffs and
20 class members written notice on wage statements and/or other separate written statements that
21 listed the requisite information set forth in Labor Code section 246(i). Specifically,
22 Defendants' paystubs fail to state Plaintiffs' and class members paid sick leave balance, in
23 violation of Labor Code section 246(i).

24 150. At all relevant times herein, California's Wage Theft Prevention Act was
25 enacted to ensure that employers provide employees with basic information material to their
26 employment relationship at the time of hiring, and to ensure that employees are given written
27 and timely notice of any changes to basic information material to their employment. Codified
28 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).

7 151. During the relevant time period, Defendants failed to provide written notice to
8 Plaintiffs and class members that lists the requisite information set forth in Labor Code section
9 2810.5(a)(1)(A)-(C) on a company-wide basis.

10 152. Defendants' failure to provide Plaintiffs and class members with written notice
11 of basic information regarding their employment with Defendants is in violation of Labor
12 Code section 2810.5.

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

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

23 **TENTH CAUSE OF ACTION**

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

25 **Unfair Business Practices**

26 **(Against all Defendants)**

27 155. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
28 and every allegation set forth above.

1 156. Defendants are a “person” as defined by California Business & Professions
2 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

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

9 158. Defendants’ activities, namely Defendants’ company-wide practice and/or
10 policy of not paying Plaintiffs and class members all meal and rest period premium wages due
11 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the
12 compensation guarantee and enhanced enforcement implemented by section 226.7. The
13 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
14 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
15 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
16 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and
17 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
18 unfair business practice in violation of California Business & Professions Code sections
19 17200, *et seq. (Id.)*

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

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

1 Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **ELEVENTH CAUSE OF ACTION**

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

5 **(Against all Defendants)**

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

8 162. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff Aguilar to
9 recover various civil penalties for the violation(s) of the Labor Code sections enumerated in
10 Labor Code section 2699.5.

11 163. Defendants' conduct, as alleged herein, violates the applicable IWC Wage
12 Order and numerous sections of the California Labor Code, including, but not limited to, the
13 following:

- 14 (a) Violations of Labor Code sections 510, 1198, and the applicable IWC
15 wage order for Defendants' failure to compensate Plaintiff Aguilar and
16 other aggrieved employees with overtime wages for all hours worked in
17 excess of eight in one day or forty in one week and failure to properly
18 calculate the overtime rates paid to Plaintiff Aguilar and other non-party
19 aggrieved employees, as alleged herein;
- 20 (b) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
21 and the applicable IWC wage order for Defendants' failure to
22 compensate Plaintiff Aguilar and other aggrieved employees with at
23 least minimum wages for all hours worked as alleged herein;
- 24 (c) Violations of Labor Code sections 226.7, 512(a), 516, 1198, and the
25 applicable IWC wage order for Defendants' failure to provide Plaintiff
26 Aguilar and other aggrieved employees with meal periods, as alleged
27 herein;
- 28 (d) Violations of Labor Code sections 226.7, 1198, and the applicable IWC

1 wage order for Defendants' failure to authorize and permit rest periods
2 to Plaintiff Aguilar and other aggrieved employee, as alleged herein.

3 (e) Violations of Labor Code section 226(a), 516, 1198, and the applicable
4 IWC wage order for failure to provide accurate and complete wage
5 statements to Plaintiff Aguilar and other aggrieved employees as alleged
6 herein;

7 (f) Violations of Labor Code section 1174(d), 1198, and the applicable
8 IWC wage order for failure to maintain payroll records as alleged
9 herein;

10 (g) Violations of Labor Code sections 201, 202, and 203 for failure to pay
11 all earned wages upon termination as alleged herein;

12 (h) Violations of Labor Code section 204 for failure to pay all earned wages
13 during employment as alleged herein;

14 (i) Violations of Labor Code section 212 and 213 for the unlawful
15 discounting of wages as set forth below;

16 (j) Violations of Labor Code sections 221 and 224 for unlawful deductions
17 from wages as alleged herein;

18 (k) Violations of Labor code section 223 for the secret payment of lower
19 wages as set forth below;

20 (l) Violations of Labor Code section 246 for the failure to provide paid sick
21 leave benefits and written notice of paid sick leave benefits as alleged
22 herein;

23 (m) Violations of Labor Code sections 226(b), 432, and 1198.5 for the
24 failure to produce or permit inspection of records and instruments
25 signed as alleged herein;

26 (n) Violations of Labor Code section 2802 for the failure to reimburse
27 business expenses as alleged herein;

28 (o) Violations of Labor Code section 2810.5(a)(1)(A)-(C) for failure to

1 provide notice of material terms of employment to Plaintiff Aguilar and
2 other aggrieved employees as alleged herein; and

3 (p) Violations of Labor Code sections 6401 and 6403 for the failure to
4 provide safety devices and safeguards as alleged herein.

5 164. California Labor Code sections 212 and 213 prohibits employers from issuing
6 any instruments for the payment of wages unless such instruments are negotiable and payable
7 in cash on demand and without discount. During the relevant time period, Defendants
8 provided Plaintiff Aguilar and other aggrieved employees with payroll debit cards as payment
9 of their wages. Plaintiff Aguilar and other aggrieved employees were required to use
10 automated teller machines or to go to banks to withdraw funds from the payroll debit cards.
11 Plaintiff Aguilar and other aggrieved employees were required to pay annual fees, per-
12 transaction fees, and other fees in connection with their use of the payroll debit cards to access
13 their earned wages. As a result, the fees charged to Plaintiff Aguilar and other aggrieved
14 employees resulted in a discount of their wages.

15 165. California Labor Code section 223 makes it unlawful for an employer to
16 secretly pay wages lower than required by statute while purporting to pay legal wages.
17 During the relevant time period, Defendants willfully and systematically deducted wages from
18 Plaintiff Aguilar and other aggrieved employees pursuant to the policy of providing Plaintiff
19 Aguilar and other aggrieved employees with fee-generating payroll debit cards as payment of
20 their wages. Defendants' policy of issuing debit cards resulted in the payment of less than
21 statutorily-required wages to Plaintiff Aguilar and other aggrieved employees. In doing so,
22 Defendants acted with the intent to deprive Plaintiff Aguilar and other aggrieved employees of
23 statutory wages, including, but not limited to, overtime wages, to which they were entitled to
24 under California law. Thus, Defendants paid Plaintiff Aguilar and other aggrieved employees
25 lower wages than those they were entitled to while purporting that other aggrieved employees
26 were properly paid.

27 166. California Labor Code section 210 provides: "In addition to, and entirely
28 independent and apart from, any other penalty provided in this article, every person who fails

1 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,
2 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
3 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
5 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

6 167. California Labor Code section 6401 provides that employers must furnish and
7 use safety devices and safeguards, and adopt and use practices, means, methods, operations,
8 and processes which are reasonably adequate to render the employment and place of
9 employment safe and healthy. California Labor Code Section 6401 further provides that an
10 employer must to everything reasonably necessary to protect the life, safety and health of its
11 employees. California Labor Code section 6403(a) requires that employers provide and use
12 safety devices and safeguards reasonably adequate to render the employment and place of
13 employment safe.

14 168. Defendants, on a company-wide basis, failed to provide Plaintiff Aguilar and
15 other aggrieved employees with safety devices and safeguards, such as protective face
16 masks/coverings and gloves, to keep them safe in the workplace. Despite the fact that
17 Defendants required employees to wear certain personal protective equipment, including face
18 masks and gloves to wear while working, Defendants failed to provide such reasonably
19 necessary equipment to Plaintiff Aguilar and other aggrieved employees to keep them safe.
20 Although employees are required throughout the state to wear face coverings in the
21 workplace, in light of the current COVID-19 pandemic, Defendants have systematically failed
22 to provide Plaintiff Aguilar and other aggrieved employees with protective face masks and
23 gloves.

24 169. Defendants’ failure to provide Plaintiff Aguilar and other aggrieved employees
25 with safety devices and safeguards, including basic personal protective equipment, for the
26 workplace violates Labor Code sections 6401 and 6403. Plaintiff Aguilar and other aggrieved
27 employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest
28 thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

170. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable 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.”

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

172. As stated, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

173. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff Aguilar, acting in the public interest as private attorneys general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 212, 221, 223, 224, 226(a), 226(b), 226.7, 246, 432, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

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

Class Certification

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

1 3. That Plaintiffs be appointed as the representatives of the Class and One-Year
2 Subclass;

3 4. That counsel for Plaintiffs be appointed as class counsel.

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

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

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

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

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

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

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

17 10. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
19 minimum wages to Plaintiffs and class members;

20 11. For general unpaid wages and such general and special damages as may be
21 appropriate;

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

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

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

27 15. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 1198 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and class members;

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

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

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

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

1 28. For attorneys' fees under California Code of Civil Procedure section 1021.5, or
2 as otherwise provided by law; and

3 29. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 30. That the Court declare, adjudge and decree that Defendants violated the
7 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
8 Orders as to Plaintiffs and One-Year Subclass members, and willfully failed to provide
9 accurate itemized wage statements thereto;

10 31. For all actual, consequential and incidental losses and damages, according to
11 proof;

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

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

14 34. For attorneys' fees and costs under California Labor Code section 226(e)(1);
15 and

16 35. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 36. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 226, 432, and 1198.5 and Industrial Welfare Commission Wage Order
21 No. 7-2001, section 7 by failing to produce for inspection and copying or otherwise permit
22 inspection and copying of records relating to Plaintiffs' and class members' employment with
23 Defendants;

24 37. For statutory penalties pursuant to California Labor Code section 226(f) and
25 1198.5 (k);

26 38. For general and special damages as may be appropriate;

27 39. For injunctive relief pursuant to California Labor Code section 226(h) and
28 1198.5(l) including, but not limited to, an order requiring Defendants to produce for

1 inspection and copying or otherwise permit inspection and copying of records relating to
2 Plaintiffs' employment with Defendants as soon as reasonably practical;

3 40. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
4 California Labor Code section 226(h) and 1198.5(l); and

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

7 **As to the Seventh Cause of Action**

8 42. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201, 202, and 203 by willfully failing to pay overtime wages, minimum
10 wages, and meal and rest period premiums owed at the time of termination of the employment
11 of Plaintiffs and other terminated class members;

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

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

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

18 46. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

21 47. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
23 related expenses and costs incurred by Plaintiffs and class members;

24 48. For unpaid business-related expenses and such general and special damages as
25 may be appropriate;

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

28 50. For all actual, consequential and incidental losses and damages, according to

1 proof;

2 51. For attorneys' fees and costs pursuant to California Labor Code section
3 2802(c), or as otherwise provided by law; and

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

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

7 53. That the Court declare, adjudge and decree that Defendants conduct of failing
8 to provide Plaintiffs and class members all overtime wages due to them, failing to provide
9 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and
10 class members all meal and rest periods, failing to provide accurate and complete wage
11 statements, failing to maintain accurate payroll records, failing timely to pay all earned wages
12 during employment, failing to provide written notice of paid sick leave or paid time off
13 available, requiring Plaintiffs and class members to utilize payroll debit cards that charged
14 fees, failing to reimburse for business-related expenses, and failing to provide employees with
15 basic information material to their employment, constitutes an unlawful business practice in
16 violation of California Business and Professions Code sections 17200, *et seq.*;

17 54. For restitution of unpaid wages to Plaintiffs and all class members and
18 prejudgment interest from the day such amounts were due and payable;

19 55. For the appointment of a receiver to receive, manage and distribute any and all
20 funds disgorged from Defendants and determined to have been wrongfully acquired by
21 Defendants as a result of violations of California Business & Professions Code sections 17200
22 *et seq.*;

23 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Code of Civil Procedure section 1021.5; 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' conduct of denying

1 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
2 an unfair business practice in violation of California Business and Professions Code sections
3 17200, *et seq.*;

4 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
5 from Plaintiffs and class members and prejudgment interest from the day such amounts were
6 due and payable;

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

11 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5;

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

14 63. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Eleventh Cause of Action**

17 64. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code sections: 510 and 1198 (by failing to pay all overtime
19 wages); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for
20 all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide meal periods); 226.7,
21 516, and 1198 (by failing to authorize and permit rest periods); 226(a) and 1198 (by failing to
22 provide accurate and complete wage statements); 1174(d) (by failing to maintain accurate and
23 complete payroll records); 201, 202, 203 (by failing timely to pay all unpaid wages upon
24 termination); 204 (by failing timely to pay all earned wages during employment); 212 and 213
25 (by unlawfully discounting wages); 221 and 224 (by illegally deducting from wages); 223 (by
26 secretly paying lower wages); 246 (by failing to provide paid sick leave benefits and written
27 notice of paid sick leave benefits); 226(b), 432, and 1198.5 (by failing to produce and/or
28 permit inspection of records and instruments signed); 2802 (by failing to reimburse business

1 expenses); 2810.5 (by failing to provide notice of material terms of employment); and that
2 Defendants committed said violations of the Labor Code against Plaintiff Aguilar and
3 Defendants' current and former employees; and 6401 and 6403 (by failing to provide safety
4 devices and safeguards.

5 65. For civil penalties for conduct occurring any time between one year prior to the
6 filing of this complaint and judgment, pursuant to California Labor Code sections 210, 226.3,
7 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), plus costs and attorneys' fees, for
8 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224,
9 226(a), 226(b), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
10 1198, 1198.5, 2802, 2810.5, 640, and 6403;

11 66. For attorneys' fees and costs pursuant to California Labor Code section
12 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
13 Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226(b), 226.7, 246,
14 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5,
15 6401, and 6403;

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

17 68. For such other and further relief as the Court may deem equitable and
18 appropriate.
19
20
21

22 Dated: April 15, 2021

Respectfully submitted,

Capstone Law APC

23
24
25 By:



Robert Drexler
Molly DeSario
Jonathan Lee

26
27 Attorneys for Plaintiffs Donna Marshall, Adam
28 Eastham, and Jimmy Aguilar

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MOLLY DESARIO
310.556.4167 Direct
Molly.DeSario@capstonelawyers.com

December 3, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jimmy Aguilar v. Faneuil, Inc., et al.*

Dear PAGA Administrator:

This office represents Jimmy Aguilar in connection with his claims under the California Labor Code. Mr. Aguilar was an employee of FANEUIL, INC. and/or ALJ REGIONAL HOLDINGS, INC. (collectively, "FANEUIL").

The employers may be contacted directly at the addresses below:

FANEUIL, INC.
2 EATON STREET, SUITE 1002
HAMPTON, VA 23669

ALJ REGIONAL HOLDINGS, INC.
244 MADISON AVENUE
NEW YORK, NY 10016

Mr. Aguilar 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. Aguilar seeks relief on behalf of himself, the State of California, and other persons who were employed by FANEUIL in California as a non-exempt, hourly paid employee 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.

FANEUIL has employed Mr. Aguilar as a non-exempt, hourly paid employee from approximately May 2018 to the present. Mr. Aguilar has been employed as a Payment Processor while working for FANEUIL at its Irvine location, which services the Transportation Corridor Agencies ("TCA") contract. Mr. Aguilar typically works eight (8) hours or more per day, five (5) days per week and approximately 40 hours per week with occasional overtime. He is compensated approximately \$15.00 per hour. His job duties include, without limitation, handling customer calls, processing

payments, updating account information, processing mail regarding customer accounts, and handling applications for transponders.

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

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

FANEUIL, INC. and ALJ REGIONAL HOLDINGS, INC. are Delaware corporations and provide call centers and other business process outsourcing solutions to companies nationwide. FANEUIL has approximately 5,500 employees nationwide and approximately 800 in California. On information and belief, FANEUIL’s company headquarters are located at 2 Eaton Street, Suite 1002, Hampton, Virginia 23669. Upon information and belief, FANEUIL maintains a centralized Human Resources (HR) department at their headquarters in Hampton, Virginia or New York, New York, for all non-exempt, hourly paid employees working for FANEUIL in California, including Mr. Aguilar and other aggrieved employees. At all relevant times, FANEUIL issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Aguilar and other aggrieved employees, regardless of their location or position. The policies and procedures presently believed to cause violations of the California Labor Code are identified herein.

On information and belief, FANEUIL maintains a centralized Payroll department at their corporate headquarters, which processes payroll for all its non-exempt, hourly paid employees in California, including Mr. Aguilar and other aggrieved employees. Upon information and belief, FANEUIL issues the same uniform and formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their location or position. FANEUIL processes payroll for non-exempt, hourly paid employees in the same manner throughout California, and the same methods and formulas were used to calculate wages due to Mr. Aguilar and other aggrieved employees in California. FANEUIL issued uniform, standardized wage statements to Mr. Aguilar and other aggrieved employees during the relevant time period.

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

¹ These facts, theories, and claims are based on Mr. Aguilar’s experience and counsel’s review of those records currently available relating to Mr. Aguilar’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. Aguilar 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.

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 non-discretionary bonuses and incentive pay.

FANEUIL willfully failed to pay all overtime wages owed to Mr. Aguilar and other aggrieved employees. During the relevant time period, Mr. Aguilar 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 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours they were worked were not recorded.

First, FANEUIL has a company-wide policy and/or practice of failing to record hours worked by its employees. FANEUIL has a practice and/or policy of requiring that other aggrieved employees report to work 5-10 minutes before their scheduled shift start time so that they can get to their workstation, turn on their computers, and log in, all before their scheduled shift start time. However, because there is no timekeeping system in place, and because FANEUIL's policy is to only pay other aggrieved employees for their scheduled shift hours, they are not compensated for this time.

Furthermore, Mr. Aguilar and other aggrieved employees have performed work after their scheduled shifts, but are not paid by FANEUIL for all hours worked. For example, Mr. Aguilar has sometimes been required to finish work projects as instructed by his supervisor, after his scheduled shift has ended. Also, FANEUIL has a company-wide policy and/or practice prohibiting other aggrieved employees from terminating calls with customers, resulting in off-the-clock work performed after their scheduled shifts. If employees are still on a customer call at or near the end of their shifts, FANEUIL's expectation has been that they stay beyond their scheduled shift until the call is completed. Because FANEUIL has a policy and/or practice of requiring employees to continue working after their scheduled shifts have ended, but provides no mechanism for them to report hours worked outside their scheduled shifts, Mr. Aguilar and other aggrieved employees have not been paid for all hours worked.

Second, FANEUIL has a company-wide policy or practice of requiring Mr. Aguilar and other aggrieved employees to complete work-related tasks while off the clock. For example, security-related certifications generally take about an hour to complete and occur sporadically (approximately twice per year) when FANEUIL needs to disseminate new information to employees. However, FANEUIL has not compensated Mr. Aguilar and other aggrieved employees for this time spent completing certifications. Additionally, FANEUIL has a company-wide policy or practice of requiring Mr. Aguilar and other aggrieved employees to travel while off-the-clock to other FANEUIL customer service centers. For example, Mr. Aguilar and other aggrieved employees were required to travel to and from other FANEUIL facilities to work during the COVID-19 pandemic. As a further example, when the internet and computer systems are unavailable at FANEUIL's San Clemente call center, FANEUIL has instructed other aggrieved employees to drive to FANEUIL's customer service center in Irvine, California, to complete their shifts there, all while off-the-clock. FANEUIL has not compensated Mr. Aguilar and other aggrieved employees for this travel time.

Third, FANEUIL has systematically, and on a company-wide basis, understaffed call centers and failed to provide Mr. Aguilar and other aggrieved employees with adequate meal period coverage. In addition, FANEUIL has implemented a practice and/or policy requiring that Mr. Aguilar and other aggrieved employees continue working, regardless of whether doing so may interfere with an upcoming meal period. This lack of adequate meal period coverage, coupled with the requirement that Mr. Aguilar and other aggrieved employees answer supervisors' questions or complete work

during meal periods, has caused Mr. Aguilar and other aggrieved employees to miss meal periods and to have meal periods interrupted. Because Mr. Aguilar and other aggrieved employees have not always received compliant meal periods and because FANEUIL does not pay them for the time they spent working during their meal periods (*see infra*), FANEUIL has failed to compensate Mr. Aguilar and other aggrieved employees for all hours worked.

Fourth, FANEUIL has a company-wide timekeeping practice and/or policy of automatically deducting 30 minutes for meal periods from each employee's scheduled shift hours, regardless of whether other aggrieved employees received a full, uninterrupted 30-minute meal period. Alternatively, on information and belief, because FANEUIL frowns upon employees accruing meal period penalties, FANEUIL has pressured Mr. Aguilar and other aggrieved employees to clock themselves out at their designated meal period start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that FANEUIL would otherwise owe. Consequently, Mr. Aguilar and other aggrieved employees have performed work during meal periods for which they were not paid.

Fifth, other aggrieved employees have sometimes been forced to miss their meal periods altogether when computer systems were down. For example, FANEUIL has instructed other aggrieved employees to travel to another call center site (*see supra*) during their unpaid meal periods, where they could then continue to take inbound customer calls and complete their shifts. Because other aggrieved employees have not always received compliant meal periods, because there is no mechanism in place to indicate when a meal period was cut short, interrupted, and/or missed, and because FANEUIL has deducted 30 minutes for meal periods regardless, FANEUIL has not compensated other aggrieved employees for all hours worked.

FANEUIL knew or should have known that as a result of these company-wide practices, Mr. Aguilar and other aggrieved employees were working off-the-clock before and after their scheduled shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. FANEUIL also knew, or should have known, that it did not pay Mr. Aguilar and other aggrieved employees for this off-the-clock work.

Because Mr. Aguilar and other aggrieved employees have 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 has qualified for overtime premium pay. Therefore, Mr. Aguilar and other aggrieved employees have not been paid overtime wages for all of the overtime hours they worked. FANEUIL's failure to pay Mr. Aguilar and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, FANEUIL has not paid other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, FANEUIL has paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FANEUIL has failed to incorporate all compensation, including, but not limited to, 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, FANEUIL has failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Aguilar 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 by the applicable Wage Order 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.”

As stated above, FANEUIL has a company-wide policy and/or practice of only paying Mr. Aguilar and other aggrieved employees for their scheduled shifts, as opposed to paying them for actual hours worked. FANEUIL has no timekeeping system in place to permit Mr. Aguilar and aggrieved employees to track and submit any hours worked outside their scheduled shifts, including time worked before and after their scheduled shifts booting up their computers, completing work projects, or wrapping up customer service phone calls. As also mentioned, FANEUIL has required that Mr. Aguilar and other aggrieved employees to complete certifications and/or travel to and from neighboring customer service centers while off-the-clock, time for which they were not paid.

In addition, as mentioned, other aggrieved employees had no way to clock themselves in and out for meal periods, or indicate when they had not received a compliant meal period; however, FANEUIL's timekeeping system has deducted a full 30 minutes of time for meal periods regardless of whether other aggrieved employees received compliant meal periods. Alternatively, on information and belief, because FANEUIL frowns upon employees accruing meal period penalties, FANEUIL has pressured Mr. Aguilar and other aggrieved employees to clock themselves out at their designated meal period start and end times to reflect compliant meal periods; thus, Mr. Aguilar and other aggrieved employees have performed work during meal periods for which they were not paid. Finally, FANEUIL has required Mr. Aguilar and other aggrieved employees to travel to other FANEUIL customer service centers during unpaid meal periods or perform other work, resulting in interrupted meal periods, but has not compensated them for this time.

FANEUIL knew or should have known that as a result of these company-wide practices, Mr. Aguilar and other aggrieved employees were suffered or permitted to perform work for which they were not paid. FANEUIL also knew, or should have known, that it did not pay Mr. Aguilar and other aggrieved employees for this off-the-clock work in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, FANEUIL regularly failed to pay at least minimum wages to Mr. Aguilar 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. Aguilar 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, and 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.

First, FANEUIL has systematically, and on a company-wide basis, understaffed call centers and failed to provide Mr. Aguilar and other aggrieved employees with adequate meal period coverage. In addition, FANEUIL has implemented a practice and/or policy requiring that Mr. Aguilar and other aggrieved employees continue working, regardless of whether doing so may interfere with an upcoming meal period. This lack of adequate meal period coverage, coupled with the requirement that Mr. Aguilar and other aggrieved employees answer supervisors' questions or complete work during meal periods, has caused Mr. Aguilar and other aggrieved employees to miss meal periods and to have meal periods interrupted. As a result, Mr. Aguilar and other aggrieved employees have had their meal periods routinely interrupted to return to work duties while off-the-clock, including discussing assignments that needed to be completed and/or prior issues that arose that day.

Additionally, FANEUIL had a company-wide policy or practice of requiring other aggrieved employees to travel during their unpaid meal periods to other nearby FANEUIL customer service centers when internet and/or computer services were down. This has resulted in other aggrieved employees forgoing their meal periods altogether because they were required to use their unpaid meal periods to travel to other customer service centers, where they could finish out their shifts. As a result of these practices and/or policies, Mr. Aguilar and other aggrieved employees have been required to continue to perform their duties without being able to take a timely, compliant meal period. Additionally, because FANEUIL has failed to schedule meal periods and required employees to continue working after their first five (5) hours of work had passed, Mr. Aguilar and other aggrieved employees have also been required to take late meal periods.

Second, FANEUIL's failure to provide Mr. Aguilar and other aggrieved employees with a mechanism to clock in and out or otherwise correct their time entries when their meal periods were interrupted or missed, has prevented Mr. Aguilar and other aggrieved employees from indicating when they received a non-compliant meal period. Additionally, as stated, because FANEUIL frowns upon employees accruing meal period penalties, upon information and belief, FANEUIL's management has pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by FANEUIL.

As a result of FANEUIL's practices and/or policies, Mr. Aguilar and other aggrieved employees have been forced to work in excess of five (5) hours before taking a meal period and, at times, have their meal periods interrupted, and/or have had to forgo their meal periods altogether. For example, Mr. Aguilar has missed or had his meal periods interrupted a few times per month, due to his workload and interruptions from supervisors.

Furthermore, FANEUIL has not scheduled second meal periods and has no policy for providing Mr. Aguilar and other aggrieved employees second 30-minute meal periods on days that they work in excess of ten (10) hours in one day. For example, Mr. Aguilar occasionally works in excess of ten (10) hours, but FANEUIL has never permitted him to take a second 30-minute meal period. Instead, Mr. Aguilar has continued to respond to customer service calls and other payment processing functions. Other aggrieved employees have not received second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Aguilar and other aggrieved employees have not signed valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, FANEUIL knew or should have known that as a result of its practices and/or policies, that Mr. Aguilar and other aggrieved employees have been prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods and that FANEUIL has not paid Mr. Aguilar and other aggrieved employees meal period premium wages when they were interrupted. As a result, Mr. Aguilar and other aggrieved employees have had to work through part or all of their meal periods, had their meal periods interrupted, and/or waited extended periods of time before taking meal periods.

FANEUIL also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Aguilar and other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that FANEUIL has paid other aggrieved employees premium pay for missed, late, and interrupted meal periods, FANEUIL has not paid other aggrieved employees at the correct rate of pay for premium wages because FANEUIL 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, FANEUIL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Aguilar 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 Provide Rest Periods

California Labor Code sections 226.7, 516, and 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 provide 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, FANEUIL regularly has failed to authorize and permit Mr. Aguilar and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As mentioned, FANEUIL has, on a company-wide basis, understaffed shifts and thereby failed to permit Mr. Aguilar and other aggrieved employees to take compliant rest periods. As with meal periods, Mr. Aguilar and other aggrieved employees have routinely been forced to take non-compliant rest periods in order to minimize wait time for customers. Further, FANEUIL has, and continues to have a company-wide policy of limiting employees to two (2) rest periods per shift, regardless of how many hours they work. For example, Mr. Aguilar and other aggrieved employees have worked shifts of ten (10) hours or more, but were not permitted to take a third 10-minute rest period to which they were entitled.

Furthermore, FANEUIL has maintained and implemented a rest period policy prohibiting Mr. Aguilar and/or other aggrieved employees from leaving the premises during rest periods. Because they have been restricted from leaving the premises during rest periods, Mr. Aguilar and/or other aggrieved employees have been denied the ability to use their rest periods freely for their own purposes. Thus, FANEUIL effectively has maintained control over Mr. Aguilar and/or other aggrieved other aggrieved employees during rest periods.

As a result of FANEUIL’s practices and policies, Mr. Aguilar and other aggrieved employees have worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Aguilar has missed five (5) out of ten rest periods each week due to his workload.

FANEUIL 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 or permitted. Because of this practice and/or policy, Mr. Aguilar and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that FANEUIL has paid other aggrieved employees one (1) additional hour of premium pay for missed rest periods, FANEUIL has not paid other aggrieved employees at the correct rate of pay for premium wages because FANEUIL has 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, FANEUIL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Aguilar and other aggrieved employees are therefore 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. FANEUIL has not provided Mr. Aguilar 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, FANEUIL has knowingly and intentionally provided Mr. Aguilar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FANEUIL issued uniform wage statements to other aggrieved employees that fail to correctly list: gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period, including overtime rates of pay; the correct name and address of the legal entity that is the employer; and the corresponding number of hours worked at each hourly rate. Specifically, FANEUIL violated sections 226(a)(1), 226 (a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because FANEUIL has not recorded the time Mr. Aguilar and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), FANEUIL did not list the correct amount of gross wages and net wages earned by Mr. Aguilar and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, FANEUIL failed to accurately list the total number of the hours worked by Mr. Aguilar 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).

Further, because FANEUIL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, FANEUIL did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). FANEUIL 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 premium wages, in violation of section 226(a)(9).

Separate from these violations, FANEUIL issued uniform wage statements to Mr. Aguilar and other aggrieved employees that fail to list the correct name and address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employee's 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, obtain unemployment benefits, etc. FANEUIL systematically, and on a company-wide basis, issued wage statements to Mr. Aguilar and other aggrieved employees that listed "Faneuil, Inc." as the employing entity and "2 Eaton Street, Suite 1002, Hampton, VA 23669" as the employer's address. Upon information and belief, the true name of the employing entity is "ALJ Regional Holdings, Inc.," whose address is 244 Madison Avenue, PMB #358, New York, NY 10116.

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 inclusive dates of the period for which 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 “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), FANEUIL willfully failed to maintain accurate payroll records for Mr. Aguilar 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, FANEUIL failed, on a company-wide basis, to keep records of work period and meal period start and stop times for Mr. Aguilar and other aggrieved employees, in violation of section 1198. Also, as stated, FANEUIL has engaged in a company-wide practice and/or policy of falsifying Mr. Aguilar’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Aguilar and other aggrieved employees. Furthermore, in light of FANEUIL’s failure to provide Mr. Aguilar and other aggrieved employees with second 30-minute meal periods to which they were entitled, FANEUIL kept no records of meal start and end times for second meal periods.

Because FANEUIL failed to provide the accurate number of total hours worked on wage statements, Mr. Aguilar 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. Aguilar 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. Aguilar 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, FANEUIL has failed to pay Mr. Aguilar and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Aguilar and 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 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 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.

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

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 §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, FANEUIL has provided Mr. Aguilar and other aggrieved employees with payroll debit cards as payment of their wages but failed to disclose any fees associated with the

use of the cards. Mr. Aguilar and other aggrieved employees have been required to use automated teller machines (ATMs) or go to banks to withdraw funds from the payroll debit cards. Mr. Aguilar and other aggrieved employees have been required to pay annual fees, per-transaction fees, and other fees in connection with their use of the payroll debit cards to access their earned wages. As a result, the fees charged to Mr. Aguilar and other aggrieved employees have resulted in a discount of their wages.

California courts recognize a policy favoring the full and prompt payment of wages to employees. FANEUIL's payroll card program is inconsistent with this policy. Because FANEUIL's company-wide payroll debit card program denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Aguilar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, FANEUIL unlawfully deducted a portion of wages previously paid to Mr. Aguilar and other aggrieved employees in violation of California Labor Code section 221. FANEUIL systematically, and on a company-wide basis, has provided Mr. Aguilar and other aggrieved employees with payroll debit cards as payment of their wages but has never disclosed the fees associated with usage of the cards. Mr. Aguilar and other aggrieved employees have been required to use automated teller machines (ATMs) to withdraw funds from the payroll debit cards, or they could use the debit cards to make purchases at retailers who accept debit cards. Mr. Aguilar and other aggrieved employees have been required to pay annual fees, per-transaction fees, and ATM fees to access their earned wages. The fees charged to Mr. Aguilar and other aggrieved employees have resulted in a discount of their wages.

FANEUIL's payroll debit card program, which has resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Aguilar's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Aguilar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, FANEUIL willfully and systematically has deducted wages from Mr. Aguilar and other aggrieved employees pursuant to its policy of providing Mr. Aguilar and other aggrieved employees with fee-generating payroll debit cards as payment of their wages without disclosing the fees associated with the cards. FANEUIL's policy of issuing debit cards has resulted in the payment of less than statutorily required wages to Mr. Aguilar and other aggrieved employees.

In doing so, FANEUIL has acted with the intent to deprive Mr. Aguilar and other aggrieved employees of statutory wages, including, but not limited to, overtime wages, to which they were entitled to under California law. Thus, FANEUIL has paid Mr. Aguilar and other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Mr. Aguilar and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Provide Paid Sick Leave Benefits and Written Notice of Paid Sick Leave Benefits

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

During the relevant time period, FANEUIL systematically has failed to provide other aggrieved employees paid sick leave of no less than 24 hours or three (3) days. Other aggrieved employees have worked in excess of 30 days for FANEUIL in California and have therefore been eligible to receive paid sick leave. However, FANEUIL has failed to provide other aggrieved employees with any sick leave benefits, in violation of section 246(b)(4).

Additionally, and incidentally, FANEUIL has failed to provide other aggrieved employees written notice on wage statements and/or other separate written statements that listed the requisite information set forth in Labor Code section 246(i). FANEUIL's ongoing and systematic failure to provide sick leave benefits to employees violates California Labor Code section 246.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b), 432, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h)

states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750.00 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

The operative Industrial Welfare Commission Wage Order No. 4-2001, section 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. The applicable wage order further provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant period, other aggrieved employees sent FANEUIL reasonable written requests for documents and records pertaining to their employment. However, FANEUIL systematically, and on a company-wide basis, failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to other aggrieved employees’ employment within the requisite time limits.

Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 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 4-2001, 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, FANEUIL, on a company-wide basis, has required that Mr. Aguilar and other aggrieved employees use their own personal cellular phones to communicate with FANEUIL regarding work-related matters. Although FANEUIL supervisors contact Mr. Aguilar on his personal cellular phone to discuss work-related matters, he has never been reimbursed for his cellular phone expenses.

Second, during the relevant time period, FANEUIL, on a company-wide basis, has required that Mr. Aguilar and other aggrieved employees travel in their own personal vehicles for work purposes, but has failed to reimburse them for all costs of travel, including mileage. Mr. Aguilar and other aggrieved employees have been required to use their own personal vehicles to travel to neighboring FANEUIL customer service centers to continue performing their work duties. For example, Mr. Aguilar and other aggrieved employees were required to use their own personal vehicles to travel to and from other FANEUIL facilities to work during the COVID-19 pandemic. As a further example, other aggrieved employees drove their personal vehicles to from FANEUIL's San Clemente customer service center to FANEUIL's Irvine customer service center whenever San Clemente was experiencing internet or computer outages; however, they were not reimbursed for their mileage to and from the other customer service center location. Although FANEUIL has required Mr. Aguilar and other aggrieved employees to utilize their own vehicles and complete these tasks as part of their job duties, FANEUIL has failed to reimburse them for all of these travel expenses, including mileage.

Third, FANEUIL has required Mr. Aguilar and other aggrieved employees purchase and provide basic office supplies that were necessary for completion of assigned tasks. For example, Mr. Aguilar has been required to buy staples, staplers, tape and post-it notes; throughout his employment, he estimates spending approximately \$10-\$20 on these expenses. Additionally, FANEUIL has failed, on a company-wide basis, to provide Mr. Aguilar and other aggrieved employees with adequate face masks and protective gloves during the current COVID-19 pandemic, forcing employees to incur expenses to obtain face coverings and gloves for use in the workplace. For example, Mr. Aguilar has spent approximately \$50.00 on face masks and gloves for use at work. FANEUIL failed to provide basic supplies to Mr. Aguilar and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Aguilar and other aggrieved employees for the costs of these supplies.

FANEUIL could have provided Mr. Aguilar and other aggrieved employees with the actual tools required for use on the job, including company phones and vehicles, as well as office supplies to be used for fulfilling work-related tasks, or reimbursed employees for their actual cellular phone, travel, mileage, and supply expenses, but instead, FANEUIL passed these operating costs off onto Mr. Aguilar and other aggrieved employees. At all relevant times, Mr. Aguilar did not earn at least two (2) times the minimum wage.

Thus, FANEUIL 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. Aguilar 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.

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

Mr. Aguilar and/or other aggrieved employees are therefore 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 §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

FANEUIL, on a company-wide basis, failed to provide Mr. Aguilar and other aggrieved employees with safety devices and safeguards, such as protective face masks/coverings and gloves, to keep them safe in the workplace. Despite the fact that FANEUIL required employees to wear certain personal protective equipment, including face masks and gloves to wear while working, FANEUIL failed to provide such reasonably necessary equipment to Mr. Aguilar and other aggrieved employees to keep them safe. Although employees are required throughout the state to wear face coverings in the workplace, in light of the current COVID-19 pandemic, FANEUIL has systematically failed to provide Mr. Aguilar and other aggrieved employees with protective face masks and gloves.

FANEUIL's failure to provide Mr. Aguilar and other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code sections 6401 and 6403. Mr. Aguilar 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).

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." FANEUIL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Aguilar's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Aguilar 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Aguilar, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against FANEUIL for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226, 226.7, 246, 432, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Aguilar 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:

Molly DeSario
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4167

Best Regards,

A handwritten signature in black ink that reads "m. desario". The signature is written in a cursive, lowercase style.

Molly DeSario

Copy: FANEUIL, INC. (via U.S. Certified Mail); ALJ REGIONAL HOLDINGS, INC. (via U.S. Certified Mail); Robert Hulteng, Esq., Douglas L. Ropel, Esq., & Britney Torres, Esq., Littler Mendelson P.C., 500 Capitol Mall, Suite 2000, Sacramento, CA 95814 (via U.S. Certified Mail)

CERTIFIED MAIL®



7020 1290 0000 3958 7849

one
LAW APC
ry Park East, Ste 1000
s, CA 90067

FANEUIL, INC.
2 EATON STREET, SUITE 1002
HAMPTON, VA 23669



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FANEUIL, INC.
2 EATON STREET, SUITE 1002
HAMPTON, VA 23669



9590 9402 5816 0034 8468 54

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7849

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

FANEUIL, INC.

Street and Apt. No., or PO Box No.
2 EATON STREET, SUITE 1002

City, State, ZIP+4®
HAMPTON, VA 23669

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark

Here
Aguilar v. Faneuil,
Inc.

7020 1290 0000 3958 7849

CERTIFIED MAIL®



7020 1290 0000 3958 7856

stone
LAW APC
Century Park East, Ste 1000
es, CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALJ REGIONAL HOLDINGS, INC.
244 MADISON AVENUE
NEW YORK, NY 10016



9590 9402 5816 0034 8468 61

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7856

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

ALJ REGIONAL HOLDINGS, INC.
244 MADISON AVENUE
NEW YORK, NY 10016

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

ALJ REGIONAL HOLDINGS, INC.

Street and Apt. No., or PO Box No.

244 MADISON AVENUE

City, State, ZIP+4®

NEW YORK, NY 10016

PS Form 3800, April 2015 PSN 7530-02-000-9047

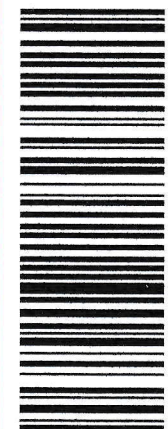
See Reverse for Instructions

Postmark
Here

Aguilar v. ALJ
Regional Holdings,
Inc.

7020 1290 0000 3958 7856

CERTIFIED MAIL



7020 1290 0000 3958 7832

Stone

LAW APC

1000
Park East, Ste 1000
Sacramento, CA 90067

Robert Hulteng, Esq., Douglas L. Ropel, Esq., &
Britney Torres, Esq.
Littler Mendelson P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Hulteng, Esq., Douglas L. Ropel, Esq.,
& Britney Torres, Esq.
Littler Mendelson P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814



9590 9402 5816 0034 8468 47

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7832

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

Robert Hulteng, Esq., Douglas L. Ropel, Esq.
& Britney Torres, Esq.
Littler Mendelson P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7020 1290 0000 3958 7832

Postmark

Aguilar V. Faneuil,
Inc

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FANEUIL, INC.
2 EATON STREET, SUITE 1002
HAMPTON, VA 23669



9590 9402 5816 0034 8468 54

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7849

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X COVID 19

☐ Agent☐ Addressee

B. Received by (Printed Name)

COVID 19

C. Date of Delivery

11-7-20

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail®
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Hulteng, Esq., Douglas L. Ropel, Esq.,
& Britney Torres, Esq.
Littler Mendelson P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814



9590 9402 5816 0034 8468 47

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7832

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Hulteng

☐ Agent☐ Addressee

B. Received by (Printed Name)

M. FOSTER

C. Date of Delivery

12-10-20

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I declare that I am over the age of eighteen
4 (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century
5 Park East, Suite 1000, Los Angeles, California 90067.

6 On April 15, 2021, I served the within document(s) described below as:

7 **SECOND AMENDED CLASS ACTION COMPLAINT**

8 on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes
9 addressed as follows:

10 Robert G. Hulteng
11 Littler Mendelson, P.C.
12 333 Bush Street, 34th Floor
13 San Francisco, CA 94104
14 *RHulteng@littler.com*

Britney Torres
Douglas L. Ropel
Littler Mendelson, P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814
BTorres@littler.com
DRopel@littler.com

15 () **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes
were mailed with postage thereon fully prepaid.

16 (X) **BY E-MAIL:** Due to the National Emergency and public health orders in California
17 related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and
18 staff are working remotely and therefore have limited capabilities to send physical mail in
the normal course of business. On this date, I personally transmitted the foregoing
document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.

19 () **PERSONAL:** I caused such envelope to be delivered by hand to the
individual(s) listed above at the address listed above via a messenger service (Prolegal).

20 () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered
via overnight courier service (FedEx) to the individuals at the address listed above.

21 () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-
named person at the telephone numbers above.

22 (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that
23 the above is true and correct.

24 **EXECUTED** this document on April 15, 2021, at Los Angeles, California.

25 
26 _____
Sandy S. Acevedo