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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LUIS BECERRA, an individual, on
behalf of himself and the State of
California, as a private attorney
general, and on behalf of all others
similarly situated,

Plaintiff,

vs.

IN-N-OUT BURGER, a California
Corporation; and DOES 1-100,
inclusive,

Defendant(s).

CASE NO. 21STCV17045

**REPRESENTATIVE ACTION
COMPLAINT**

**1. FOR PENALTIES PURSUANT
TO LABOR CODE §§2698-
2699.5 FOR:**

- a. Failure to pay final wages in violation of Cal. Labor Code §§ 201-203
- b. Retaliation in violation of Cal. Labor Code §§ 6310-6311
- c. Unsafe working conditions in violation of Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407
- d. Failure to provide complete and accurate wage statements in Violation of Cal. Labor Code §226(a)
- e. Violation of Cal. Labor Code §§ 233-234

- 1 f. Violation of California
2 HWHFA Cal. Labor Code
3 §§245, 246.5
4 g. Retaliation in violation of Cal.
5 Labor Code § 98.6
6 h. Retaliation in violation of Cal.
7 Labor Code § 1102.5
8 i. Violation of Cal. Labor Code
9 § 1198.5

10 **2. Unfair Business Practices in**
11 **Violation of Cal. Business &**
12 **Prof. Code §§ 17200, et seq.**

13
14 Plaintiff LUIS BECERRA, an individual, on behalf of himself and people of
15 the State of California as an “aggrieved employee” acting as a private attorney
16 general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et*
17 *seq.* (“PAGA”), on information and belief, makes the following allegations to
18 support his unverified Complaint.

19
20 **JURISDICTION AND VENUE**

21 1. This Court has personal jurisdiction over the Defendants because
22 they are residents of and/or are doing business in the State of California.

23 2. Venue is proper in this county in accordance with Section 395(a) of
24 the California Code of Civil Procedure because the Defendants, or some of them,
25 reside in Los Angeles County and/or the alleged wrongs occurred in the county.
26 Venue is also proper in this county because it was the county where Plaintiff and
27 all aggrieved employees were paid.
28

1 **NATURE OF ACTION**

2 3. This is a representative action brought pursuant to Labor Code §
3 2699, et seq., on behalf of the State of California on behalf of the group of
4 aggrieved employees defined as:

5 (a) (a) all individuals who were employed by IN-N-OUT BURGER, Inc. or its
6 subsidiary, predecessor, or merged entities in California as hourly, non-
7 exempt employees, from one year prior to the date of this letter and
8 continuing into the present.
9

10 These groups may collectively be referred to herein as aggrieved employees
11 and/or all aggrieved employees where appropriate.

12 4. Plaintiff, on behalf of himself and all aggrieved employees presently
13 or formerly employed by Defendants during the PAGA Period (January 4, 2020
14 and ongoing), brings this representative action pursuant to Labor Code § 2699, *et*
15 *seq.* seeking penalties for Defendants' violations of the California Labor Code §§
16 98.6, 201, 203, 226, 233, 234, 245, 246.5, 1102.5, 1198.5, 6310, 6311 for
17 retaliation for engaging in protected reporting activities, discrimination and
18 retaliation for exercising the right to use sick leave, failure to pay final wages due
19 and payable, failure to provide accurate and complete wage statements, and
20 failure to timely provide full and complete personnel file on demand.
21

22 5. This action also arises out of Defendants' unfair business practices in
23 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
24

25 **PLAINTIFF**

26 6. Plaintiff LUIS BECERRA, an individual, is a thirty-one (31) year old
27 Hispanic male. Plaintiff is, and at all relevant times mentioned herein was, a
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1 resident of the State of California, City of Ontario. At all relevant times herein,
2 Plaintiff was employed by Defendant In-N-Out Burger and worked as a butcher
3 (meat cutter) from approximately July 13, 2015 until his wrongful termination on
4 May 25, 2020.

5 7. Plaintiff is, and at all relevant times mentioned herein was, a resident
6 of the State of California, City of Ontario. Plaintiff is, and at all relevant times was,
7 an “employee” within the meaning of the California Labor Code and is therefore
8 an appropriate representative for employees similarly aggrieved by wage and hour
9 violations within the purview of the PAGA, Labor Code §§ 2699, *et seq.*

10 8. Plaintiff represents the State of California and a group of aggrieved
11 employees defined as all individuals who were employed by IN-N-OUT BURGER,
12 or its predecessor or merged entities in California as hourly, non-exempt
13 employees from January 4, 2020 and continuing into the present (hereinafter
14 referred to as “aggrieved employees”).

15 9. This group may collectively be referred to herein as aggrieved
16 employees and/or all aggrieved employees where appropriate.

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20 **DEFENDANTS**

21 10. Defendant IN-N-OUT BURGER, a California corporation, is licensed
22 to do business in the State of California and the county of Los Angeles. Defendant
23 In-N-Out Burger is a regional chain of fast food restaurants. At all times mentioned
24 herein, In-N-Out Burger was an “employer” of Plaintiff within the meaning of the
25 California Labor Code and is a “person” as defined by Cal. Bus. & Prof. Code §
26 17021.

1 11. In doing the acts herein alleged, Defendant's employees,
2 subcontractors, and agents acted within the course and scope of their employment
3 and agency with Defendant, and engaged in the acts alleged herein and/or
4 conducted, permitted, authorized, and/or ratified the conduct of its employees,
5 subcontractors, and agents, and is vicariously liable for the wrongful conduct of its
6 employees, subcontractors, and agents alleged herein.
7

8 12. Defendants DOES 1 through 100, inclusive, are other possible
9 Defendants responsible for the wrongful conduct alleged herein. The true names
10 and capacities of Defendants named herein as DOES 1 through 100, inclusive,
11 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,
12 who therefore sues such Defendants by such fictitious names pursuant to
13 California Code of Civil Procedure § 474. Plaintiff is informed and believes that
14 the DOE Defendants are California residents. Plaintiff will amend his Complaint
15 to show true names and capacities when they have been determined. Plaintiff is
16 informed and believes, and on the basis of such information and belief alleges, that
17 each Defendant DOE herein is in some manner responsible for the harassment,
18 retaliation against and wrongful termination of Plaintiff due to his protected
19 reporting activities, and damages herein alleged.
20

21 13. Defendants IN-N-OUT BURGER, a California Corporation, and
22 DOES 1 through 100, inclusive, are hereinafter referred to collectively as
23 "Defendants" unless otherwise specifically identified.
24

25 14. Plaintiff is informed and believes and thereon alleges that each
26 Defendant is, and at all times mentioned was, the agent, employee or
27 representative of each other Defendant. Each Defendant, in doing the acts, or in
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1 omitting to act as alleged in this Complaint, was acting within the scope of his or
2 her actual or apparent authority, or the alleged acts and omissions of each
3 Defendant as an agent were subsequently ratified and adopted by each other
4 Defendant as a principal. Plaintiff is further informed and believes, and based
5 thereon alleges, that each Defendant, acting as the agent of the other Defendants,
6 carried out a joint scheme, business plan or policy in all respects pertinent hereto,
7 and the acts of each Defendant are legally attributable to the other Defendants.
8 Furthermore, Defendants in all respects acted as the employer and/or joint
9 employer of Plaintiff and the other aggrieved employees.
10

11 15. California courts have recognized that the definition of “employer”
12 for purposes of enforcement of the California Labor Code goes beyond the concept
13 of traditional employment to reach irregular working arrangements for the
14 purpose of preventing evasion and subterfuge of California’s labor laws. [*Martinez*
15 *v. Combs* (2010) 49 Cal. 4th 35, 65]. As such, anyone who directly or indirectly, or
16 through an agent or any other person, engages, suffers, or permits any person to
17 work or exercises control over the wages, hours, or working conditions of any
18 person, may be liable for violations of the California Labor Code as to that person.
19 Cal. Labor Code § 558.1.
20

21 **EXHAUSTION OF REMEDIES**

22
23 16. Plaintiff timely filed a PAGA notice/complaint with the California
24 Labor Workforce Development Agency (LWDA) on January 4, 2021 against
25 Defendants online and, through his attorneys, served his PAGA notice by certified
26 mail on Defendants setting forth the facts and theories of the violations alleged
27 against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
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Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

17. On April 16, 2021, Plaintiff submitted an amended PAGA notice/complaint with the LWDA online alleging violations of the health and safety code sections 6400, 6401, 6402, 6403, 6404, and 6406. Simultaneously, Plaintiff, through his attorneys, served the amended PAGA notice via Certified Mail on Defendants, through their attorneys. Cal-OSHA did not inspect nor investigate the allegations in conformity with Labor Code § 6309 within the required time (“not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a non-serious violation”). Further, Cal-OSHA did not notify the complainant, here, the Plaintiff that it was taking any action, which it was required to do, if it was going to take action. If Cal- OSHA would have taken any action, it would have had to notify the Plaintiff within 14 calendar days of taking said action. It did not.

18. Further, Plaintiff’s PAGA notice to the LWDA dated January 4, 2021 alleged violations of Cal. Labor Code § 1198.5 for failure to produce full and complete personnel files. Pursuant to Cal. Labor Code 2699.3(c)(2)(A), Defendants had the opportunity to cure the alleged violations of Cal. Labor Code § 1198.5 within 33 calendar days of the postmark date of the notice. Defendants are required shall give written notice by certified mail within that period of time to Plaintiff and the LWDA if the alleged violation is cured, including a description of

1 actions taken, and no civil action pursuant to Section 2699 may commence. If the
2 alleged violation is not cured by Defendants within the 33-day period, Plaintiff can
3 commence a civil action pursuant to Section 2699. Defendants have neither cured
4 the violations nor provided any notice to Plaintiff and the LWDA regarding any
5 intention or attempt to cure the violation.
6

7 19. Plaintiff has, therefore, exhausted his administrative remedies prior
8 to bringing his representative action for penalties for Labor Code violations
9 pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”) (Cal.
10 Labor Code § 2698, *et seq.*).
11

12 **FACTUAL ALLEGATIONS**

13 20. Luis Becerra and all aggrieved employees have been hired by In-N-
14 Out Burger with an hourly pay and worked on average 40 hours per week. Mr.
15 Becerra was an excellent and dedicated employee until his wrongful termination
16 on May 25, 2020.
17

18 21. Importantly, In-N-Out had a practice of imposing disciplinary action
19 on Mr. Becerra’s protected time off from work. Each time he needed to be out, he
20 provided valid reasons and/or documentation, had the leave approved, and then
21 got written up for taking the approved leave. For example, on January 5, 2018, Mr.
22 Becerra was the victim of domestic violence. He called HR and InNOuCares
23 Team on January 6, 2018, and told them about the domestic violence incident. He
24 requested the next two days off of work, January 7 and 8th, because he was
25 embarrassed to come to work with bruises and cuts on his face, and he was also
26 very emotionally distressed after the incident. HR assured him that his days
27 missed would not count against him, and would be excused due to him being
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1 protected for being a victim of domestic violence. Nevertheless, he was written up
2 “because the absences were not covered” and he received discipline. Worse, the
3 documents he had provided as support for his domestic abuse leave were deleted
4 from his file. Later upon termination, Mr. Becerra asked HR what “File Deleted
5 From the PMD System” meant in his file. HR stated that the deleted documents
6 were his domestic violence report, but those days “were not counted against him.”
7 Yet, he had been written up for missing those days. He asked if they were not
8 counted against him, why had he been written up for missing those days, and asked
9 why and who deleted it. HR never responded. On information and belief, all
10 aggrieved employees were similarly reprimanded for taking approved protected
11 time off.
12

13 22. Mr. Becerra was also written up for missing three days of work on
14 December 12, 13, and 16, 2018, but he was sick with pneumonia and gave HR the
15 doctor’s note in which the doctor said Mr. Becerra needed to miss four days of
16 work to recover. Mr. Becerra was in great pain and was taking codeine every six
17 hours. In-N-Out had a policy that employees on medication that would affect their
18 performance should not work. Thus, Mr. Becerra gave HR the doctor’s note, and
19 yet was still written up. On information and belief, all aggrieved employees were
20 similarly discriminated against for taking approved protected time off.
21

22 23. On or about March 15, 2019, Mr. Becerra requested a day off for jury
23 duty, and a supervisor, Jose Manuel Andrade, told him he could have the day off
24 only if Mr. Becerra gave him the iPhone Mr. Becerra was trying to sell, for free. Mr.
25 Andrade said, “If you want the day off, give me the phone.” Mr. Becerra was forced
26 to give his supervisor the phone, free of charge, to exercise his right and duty to
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1 attend jury duty. On information and belief, all aggrieved employees were
2 similarly reprimanded or harassed for taking approved protected time off.

3 24. Manuel also subjected Mr. Becerra's girlfriend to sexual harassment.
4 In or about October 2019, Mr. Becerra reported Manuel's actions to HR and his
5 manager Robert Mitchell, manager over the entire meat department, over the
6 phone. He told them Manuel's seeking after Mr. Becerra's girlfriend created a
7 hostile working environment for Mr. Becerra when he then had to work with
8 Manuel. Mr. Mitchell and Manuel are good friends, so Mr. Mitchell claimed he did
9 not hear the complaint from Mr. Becerra, and that Mr. Becerra still had to work
10 with and listen to Manuel because Manuel was the team leader. Mr. Becerra then
11 got a write up for "not listening to his manager," because he had reported feeling
12 a hostile work environment around Manuel. On or about October 12, 2019, Mr.
13 Mitchell offered to buy Mr. Becerra Staples Center tickets using the company card
14 "for the trouble Manuel caused" "as long as he kept quiet about the incident and
15 moved on without giving Manuel any issues." On information and belief, multiple
16 aggrieved employees have complained about Manuel sexually harassing them or
17 their significant others, and not action has been taken.

18 25. On or about December 20, 2019, a different supervisor (Jose) gave
19 Mr. Becerra permission to switch a day with another employee in order to attend a
20 school festival with his daughter. The manager told him in writing that it was
21 approved, yet Mr. Becerra was marked as absent for the day, despite the other
22 employee covering for Mr. Becerra and they both had received written permission.
23 In the past, when Mr. Becerra traded days with someone, there was no problem
24 and he was not written up for it. On information and belief, all other aggrieved
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1 employees have been subjected to punishment for taking approved days off,
2 unlawfully getting assigned points to lead up to discipline, up to termination.

3 26. In or about January - February, 2020, although Covid-19 had started
4 spreading in the country and in California, Mr. Becerra and all aggrieved
5 employees continued working at In-N-Out because they worked in the essential
6 services industry. However, Mr. Becerra and all aggrieved employees were
7 employed in unsafe and unhealthy working conditions. Mr. Becerra and all
8 aggrieved employees did not feel safe at work because adequate health and safety
9 protocols, practices, and use of safety devices and safeguards were not being
10 followed by Defendants. In-N-Out did not ensure that all employees practiced
11 social distancing at the workplace. Further, In-N-Out did not make it mandatory
12 for all employees, including meat department associates, to wear protective
13 gears/safety devices like face masks at work. Moreover, the meat department was
14 full of sick employees, many of whom were exhibiting COVID-19 like symptoms
15 (especially butchers) but Defendants did not place them on medical leave. In
16 addition, an associate of Mr. Becerra's, Ignacio Castaneda, aka Nacho, lost his
17 sister to COVID sometime in February or March 2020. He had been in close
18 contact with his sister, but In-N-Out did not require him to quarantine and he came
19 to work in the meat department soon thereafter. Mr. Becerra and many associates
20 were worried they may have been exposed to COVID through Mr. Castaneda. In
21 February 2020, Mr. Becerra made a report to the L.A. Public Health Department
22 regarding In N Out meat department's actions during COVID.

26 27. The L.A. Public Health Department came to inspect the meat
27 department in response to Mr. Becerra's complaint on or about February 26,
28

2020, and reported violations. After the Report was issued, Mr. Becerra started to tell butchers who were not educated and did not speak English that they had a right to report and express their concerns regarding COVID and their safety at the workplace. Word spread and the supervisors at In-N-Out found out what Mr. Becerra was telling butchers. Just a week later, on March 6, 2020, In-N-Out gave Mr. Becerra a “final warning” for attendance reasons. In reality, they were trying to get rid of him for his reporting activity. On information and belief, Defendants similarly gave retaliatory warnings to and threatened all aggrieved employees for their protected reporting activities and asserting their rights.

28. On or about March 24, 2020, Mr. Becerra was ordered to quarantine for two weeks by the In N Out health department, HR, and Robert Mitchell, because Mr. Becerra was caring for his daughter who was exhibiting COVID symptoms. His daughter was in Modesto at the time and admitted to the ER. Mr. Becerra requested time off and sent a picture of his daughter hooked up to a breathing machine at the emergency room. His leave was approved and then afterwards they ordered him to quarantine for two weeks, until April 5, 2020.

29. On April 6, 2020, Mr. Becerra received an email from In N Out stating, “Associates who qualify under the category listed will be given 100% of their pay for full time and additional sick leave even when their sick balance runs out.” Mr. Becerra was never reimbursed for his sick leave and was not paid 100% of his normal wages. On information and belief, all aggrieved employees who took sick leave were not reimbursed.

30. When Mr. Becerra returned to work on April 8, 2020, In N Out scanned his forehead and sent him home for another two weeks’ quarantine due

1 to a high temperature, through April 18, 2020. However, they first had him work
2 for two hours after taking his temperature, and sent him home after he worked two
3 hours, in violation of OSHA and Covid orders. On information and belief, all other
4 aggrieved employees were also directed to work without using proper safety
5 protocols.
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7 31. As a full-time employee, Mr. Becerra was entitled to 80 hours of sick
8 time on March 18, 2020 to use for Covid-19 related leave. When Mr. Becerra
9 requested a cash out of his vacation time on March 10, 2020, HR cashed out 40
10 hours of sick time instead of vacation time. When Mr. Becerra told HR about this,
11 they refused to address the issue. On information and belief, Defendants similarly
12 incorrectly deducted or assigned sick and vacation time of all aggrieved
13 employees.
14

15 32. Mr. Becerra was out sick for a few days in May 2020 due to his asthma
16 problems. Mr. Becerra's supervisors were aware he had asthma. Defendants asked
17 him to provide documents related to his asthma history and also told him to go to
18 LabCorp for some medical tests (x-ray and blood work). At LabCorp he was given
19 an appointment for June 1, 2020. On May 21, 2020, he was told he had two days
20 to get this done and was suspended. He told his employer about the June 1, 2020
21 date and showed them the note from LabCorp, but they did not believe him. They
22 claimed that the note was false (he still has the note from LabCorp). On May 24,
23 2020, Mr. Becerra received a call to report to work the next day (May 25, 2020).
24 When he reported to work, he was told he was terminated due to "providing false
25 documentation" for his sick time, and that he had exhausted his sick pay. On
26 information and belief, Defendants retaliated against or terminated the
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1 employment of all aggrieved employees for using, or attempting to exercise the
2 right to use, sick leave to attend to an illness or the preventive care for themselves
3 or of a family member.

4 33. Mr. Becerra told his manager, Robert, that he could provide more
5 documents related to his illness the following next day (May 26, 2020). His
6 manager told him to keep the appointment at LabCorp and to bring back the
7 results to see if Human Resources would hire him back. Mr. Becerra went to his
8 June 1, 2020 doctor's appointment and submitted the results to the Human
9 Resources. However, HR told him at that time that they would not hire him back.
10 He later got a bill from LabCorp for approximately \$500.

11 34. Mr. Becerra's termination document stated that he "exhausted his
12 sick pay," however his last pay stub indicated that he still had 2 hours left of sick
13 pay. Approximately one month later, Mr. Becerra received another paystub by
14 mail, showing a payment of \$198.00, but he never actually received that specific
15 payment. On information and belief, Defendants similarly failed to pay all
16 aggrieved employees their final wages at the time of termination. In addition,
17 when In-N-Out terminated him, only Plaintiff and his manager, Robert, were
18 present in the meeting. However the termination letter stated three people were
19 present meeting. He was provided a copy of the separation report that did not
20 name any witness or mention the presence of a witness. Later, Mr. Becerra
21 received another separation notice that stated three individuals, including a
22 "witness" were present meeting. There was also a third signature from a
23 "witness," even though no witness had been present at the time of Mr. Becerra's
24 termination.
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35. In-N-Out also had a duty to provide a reasonable accommodation for a temporary disability if Mr. Becerra's sick leave was in fact used up. They did not do this. In-N-Out improperly wrote up Mr. Becerra to falsely use up his sick time in order to fire him. They also accused him of lying about having asthma, despite receiving proof otherwise, in order to fire him. Mr. Becerra worked for In N Out for five years with no problems, until he reported Manual for a hostile work environment. Then, when he reported safety violations, it sealed his fate. He was fired three months later. On information and belief, Defendants similarly terminated the employment of all aggrieved employees in retaliation for engaging in protected reporting activities.

FIRST CAUSE OF ACTION

Penalties pursuant to Labor Code Private Attorney General Act of 2004

(“PAGA”)(Labor Code §§2698-2699.5)

(Against All Defendants)

36. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in the paragraphs above.

37. As set forth in detail under “Factual Allegations,” Defendant violated California Labor Code §§98.6, 201, 203, 226, 233, 234, 245, 246.5, 1102.5, 1198.5, 6310 and 6311.

38. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

1 These penalties will be allocated 75 % to the Labor Workforce Development
2 Agency and 25% to the affected employees. These penalties may be stacked
3 separately for each of Defendants violations of the California Labor Code. *See e.g.*
4 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
5 LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
6 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
7 ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for
8 different Labor Code violations.”).

10 39. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition
11 to any civil penalty allowable under the law, an amount sufficient to recover
12 unpaid wages for all work performed and nonproductive times, including unpaid
13 ages and accrued sick and vacation time.

15 **Violation of Cal. Labor Code §§ 201- 203 for failure to immediately pay all**
16 **wages due and payable upon termination**

17 40. Pursuant to Cal. Labor Code § 201(a), if an employer discharges an
18 employee, the wages earned and unpaid at the time of discharge are due and
19 payable immediately. Cal. Labor Code §202(a) provides that if an employee not
20 having a written contract for a definite period quits his or her employment, his or
21 her wages shall become due and payable not later than 72 hours thereafter, unless
22 the employee has given 72 hours previous notice of his or her intention to quit, in
23 which case the employee is entitled to his or her wages at the time of quitting.
24 Further, Cal. Labor Code 203(a) provides that if an employer willfully fails to pay,
25 without abatement or reduction, any wages of an employee who is discharged, the
26 wages of the employee shall continue as a penalty from the due date thereof at the
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1 same rate until paid or until an action therefore is commenced; but the wages shall
2 not continue for more than 30 days.

3 41. The Supreme Court of California in *McLean v. State of California*
4 (2016) 1 Cal. 5th 615, 619 held as follows: “An ‘employer’ that ‘willfully fails to
5 pay’ in accordance with sections 201 and 202 ‘any wages of an employee who is
6 discharged or who quits’ is subject to so-called waiting-time penalties of up to 30
7 days’ wages.”
8

9 42. Defendants are liable for failure to pay all unpaid wages due and
10 payable to Plaintiff and all aggrieved employees in a timely manner in violation of
11 Cal. Labor Code §§ 201 – 203.

12 43. As alleged above, Mr. Becerra was not paid all the wages due and
13 payable to him at the time of his termination, including all accrued paid time off.
14 Further, Mr. Becerra still had two hours of balance sick pay at the time of his
15 termination, which he has not been compensated for to date. On information and
16 belief, Defendants have similarly denied all aggrieved employees all wages due
17 and payable to them at the time of their termination, including balance PTO.
18

19 44. Thus, Defendants, and each of them, violated the provisions of cal.
20 Labor Code §§ 201 – 203.

21 45. In this case, when Defendants terminated Mr. Becerra’s and all
22 aggrieved employees’ employment, all unpaid wages became due and payable
23 immediately. Similarly, when all aggrieved employees quit their employment with
24 Defendants, their unpaid wages became due and payable no later than 72 hours or
25 immediately, as provided in Section 202 above. Mr. Becerra and all aggrieved
26 employees were not paid the wages due and payable to them within the period
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1 prescribed in Cal. Labor Code §201 and 202. On information and belief, these
2 wages remain due and unpaid to date for several aggrieved employees. Pursuant
3 to Cal. Labor Code 203(a), Mr. Becerra and all aggrieved employees are entitled
4 to a statutory penalty of 30 days' pay for Defendants' failure to pay all earned
5 unpaid wages in violation of Cal. Labor Code 201 and 202. In addition to the
6 above, Plaintiff will also seek to recover all unpaid wages, penalties pursuant to
7 Cal. Labor Code § 203, and reasonable attorney's fees and costs.

9 46. Further, Plaintiff will also seek civil penalties pursuant to Cal. Labor
10 Code § 2699(a) and (f) against Defendants on behalf of himself and all aggrieved
11 employees who were not paid wages earned and payable to them at the time of
12 discharge or after quitting their employment with Defendants as required by Cal.
13 Labor Code §§ 201 – 203.

14
15 **Violation of Cal. Labor Code §§ 6310 and 6311**

16 47. Under Cal. Labor Code § 6310(a), no person may be discharged or
17 discriminated against in any manner for making an oral or written complaint to
18 governmental agencies having statutory responsibility for or assisting with
19 reference to employee safety or health, his or her employer, or his or her
20 representative. Employees may not be discharged for refusing to work in
21 conditions violating any occupational safety or health standard pursuant to Cal.
22 Labor Code § 6311.

24 48. As alleged above, Mr. Becerra reported the unsafe working
25 conditions at his In-N-Out Burgers worksite to the L.A. Public Health Department
26 (“LA-PHD”) which resulted in an inspection. He also informed his coworkers, all
27 aggrieved employees, of their right to a safe working environment and that
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1 Defendants were compelling all aggrieved employees to work in conditions that
2 posted a risk to their health and safety. Defendants terminated Plaintiff's
3 employment shortly after his complaint to and the inspection by the LA – PHD. Mr.
4 Becerra's complaint was a substantial motivating factor for Defendants' decision
5 to terminate his employment. Defendant's actions were therefore in violation of
6 Cal. Labor Code Section 6310. On information and belief, Defendants similarly
7 discharged, threatened with discharge, demoted, suspended, or in any other
8 manner discriminated against in the terms and conditions of employment by their
9 employer because the employee has made a bona fide oral or written complaint to
10 them or a governmental agency. On additional information and belief,
11 Defendants also discharged or otherwise retaliated against all aggrieved
12 employees for refusing to work in conditions that posed a risk to their health and
13 safety.
14

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16 49. As a result of the aforesaid violations Plaintiff will seek civil penalties
17 pursuant to Cal. Labor Code § 2699(a) and (f) against Defendants on behalf of
18 himself and all aggrieved employees for violation of Cal. Labor Code §§6310 and
19 6311.
20

21 **Violation of Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407**

22 50. Cal. Labor Code §6400(a) provides that every employer shall furnish
23 employment and a place of employment that is safe and healthful for the
24 employees therein. Cal. Labor Code §6401 provides that every employer shall
25 furnish and use safety devices and safeguards, and shall adopt and use practices,
26 means, methods, operations, and processes which are reasonably adequate to
27 render such employment and place of employment safe and healthful. Every
28

1 employer shall do every other thing reasonably necessary to protect the life, safety,
2 and health of employees.

3 51. Cal. Labor Code §6402 provides that no employer shall require, or
4 permit any employee to go or be in any employment or place of employment which
5 is not safe and healthful.
6

7 52. Cal. Labor Code §6403 provides that no employer shall fail or neglect
8 to do any of the following: (a) To provide and use safety devices and safeguards
9 reasonably adequate to render the employment and place of employment safe; (b)
10 To adopt and use methods and processes reasonably adequate to render the
11 employment and place of employment safe; (c) To do every other thing reasonably
12 necessary to protect the life, safety, and health of employees.

13 53. Cal. Labor Code §6404 provides that no employer shall occupy or
14 maintain any place of employment that is not safe and healthful.
15

16 54. Cal. Labor Code §6407 provides that every employer and every
17 employee shall comply with occupational safety and health standards, with
18 Section 25910 of the Health and Safety Code, and with all rules, regulations, and
19 orders pursuant to this division which are applicable to his own actions and
20 conduct.

21 55. As alleged hereinabove, when the Covid-19 pandemic began to
22 spread in California, Respondents did not follow health and safety practices and
23 failed to adopt use of safety devices and safeguards necessary to ensure protect the
24 life, health, and safety of Complainant and all aggrieved employees. Complainant
25 and all aggrieved employees were forced to work in a workplace that did not
26 practice social distancing or mandate use of protective gear and safety devices like
27
28

1 face masks by all employees. Further, Respondents did not ensure that employees
2 who were sick or exhibiting symptoms of Covid -19 were placed on medical leave.

3 56. Therefore, Defendants, and each of them, violated Cal. Labor Code
4 §§6400, 6401, 6402, 6403, 6404, and 6407 when they failed to employ Plaintiff
5 and all aggrieved employees in safe and healthful working conditions. In-N-Out's
6 employees were employed under unsafe conditions violative of Cal-OSHA
7 regulations and the Health and Safety Code.

9 57. As a result of the aforesaid violations Plaintiff will seek civil penalties
10 pursuant to Cal. Labor Code § 2699(a) and (f) against Defendants on behalf of
11 himself and all aggrieved employees for each violation of Cal. Labor Code §§
12 6400, 6401, 6402, 6403, 6404, and 6407.

13
14 **Violation of Cal. Labor Code § 226(a) for Failure to Provide Complete and**
15 **Accurate Wage Statements**

16 58. In addition, as set forth above, Defendants failed to provide complete
17 and accurate wage statements to Mr. Becerra and all aggrieved employees in
18 violation of Cal. Labor Code §226(a), which obligates employers, semi-monthly or
19 at the time of each payment, to furnish an itemized wage statement in writing
20 showing:

- 21 (1) gross wages earned;
22 (2) total hours worked by the employee;
23 (3) the number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece rate;
25 (4) all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item;
27
28

1 (5) net wages earned;

2 (6) the inclusive dates of the period for which the employee is paid;

3 (7) the name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a social
5 security number;

6 (8) the name and address of the legal entity that is the employer...;

7 (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the
9 employee...[.]

10
11 59. As a result of Defendants' failure to pay. Becerra and all aggrieved
12 employees their accrued PTO as well as their failure to provide the wage
13 statements indicating the correct amount of gross wages earned, accrued sick and
14 vacation time, and net wages earned. Therefore, Defendants failed to provide
15 accurate itemized wage statements setting forth the information required by
16 Labor Code § 226(a).

17
18 60. Cal. Labor Code § 226(e)(1) provides that an employee suffering
19 injury as a result of a knowing and intentional failure by an employer to comply
20 with subdivision (a) is entitled to recover the greater of all actual damages or fifty
21 dollars (\$50) for the initial pay period in which a violation occurs and one hundred
22 dollars (\$100) per employee for each violation in a subsequent pay period, not to
23 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
24 an award of costs and reasonable attorney's fees.

25
26 61. Cal. Labor Code §226(e)(2)(B) further provides that an employee is
27 deemed to suffer injury for purposes of this subdivision if the employer fails to
28

1 provide accurate and complete information as required by any one or more of
2 items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
3 easily determine from the wage statement alone the amount of the gross wages or
4 net wages paid to the employee during the pay period or any of the other
5 information required to be provided on the itemized wage statement pursuant to
6 items (2) to (4), inclusive, (6), and (9) of subdivision (a).
7

8 62. Thus, Defendants, and each of them, violated the provisions of Cal.
9 Labor Code 226(a). As a result of Defendants' failure to provide Mr. Becerra and
10 aggrieved employees accurate itemized wage statements, Plaintiff and all
11 aggrieved employees are entitled to damages, penalties, as well as an award of
12 costs and reasonable attorney's fees pursuant to Cal. Labor Code §§ 226(e)(1) and
13 226(e)(2)(B).
14

15 63. Cal. Labor Code § 226.3 provides that "[a]ny employer who violates
16 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
17 two hundred fifty dollars (\$250) per employee per violation in an initial violation
18 and one thousand dollars (\$1,000) per employee for each violation in a subsequent
19 citation, for which the employer fails to provide the employee a wage deduction
20 statement or fails to keep the required in subdivision (a) of Section 226."
21 Therefore, Defendants, and each of them, are liable to pay, and Plaintiff is entitled
22 to recover civil penalties on behalf of himself and all aggrieved employees
23 pursuant to this section for Defendants' failure to provide accurate itemized wage
24 statements pursuant to pursuant to Cal. Labor Code §§ 2699(a) and (f) and 226.3
25

26 64. Further, Plaintiff, as an Aggrieved Employee, need not
27 demonstrate or prove that Defendants conduct in refusing to provide accurate
28 and itemized wage statements was knowing, intentional, or willful. *Lopez v.*

1 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788, (2017), (“Consistent with
2 the PAGA statutory framework and the plain language and legislative history
3 of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a
4 violation of section 226(a) does not have to satisfy the “injury” and “knowing
5 and intentional” requirements of section 226(e)(1).”); *see Willner v. Manpower*
6 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a
7 PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a),
8 which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765
9 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
10 recovering PAGA penalties, one need only prove a violation of Section 226(a),
11 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
12 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do
13 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties
14 under § 2699(f) of PAGA.”).¹

15 65. Additionally, Plaintiff and all aggrieved employees will seek to
16 recover statutory penalties as well as an award of reasonable attorneys’ fees
17 and costs pursuant to Cal. Labor Code §§ 226(h).

18
19 **Violation of California Labor Code Section 233 and 234**

20 66. Pursuant to California Labor Code section 233(c), an employer shall
21

22
23 ¹ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov.
24 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab.
25 Code § 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under PAGA.”)
26 *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268
27 (“[T]he Court rejects CPS’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal. Labor Code §
28 2699, ‘any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought
by an aggrieved employee on behalf of himself or herself and other current or former employees.’ Sections
2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a) . . .”); *accord Lopez*
v. G.A.T. Airline Ground Support, Inc. (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-
6 (“It is undisputed that GAT’s paychecks do not indicate the applicable hourly rate of pay for the employee’s
regular rate, overtime rate, or double-time rate of pay...The failure to provide this information violates Section
226(a)... Because Section 226 does not provide a penalty, Section 2699(f) penalties are available.”).

1 not deny an employee the right to use sick leave or discharge, threaten to
2 discharge, demote, suspend, or in any manner discriminate against an employee
3 for using, or attempting to exercise the right to use, sick leave to attend to an illness
4 or the preventive care of a family member, or for any other reason specified in
5 subdivision (a) of Section 246.5.

6
7 67. Pursuant to Cal. Labor Code Section 234, an employer absence
8 control policy that counts sick leave taken pursuant to Section 233 as an absence
9 that may lead to or result in discipline, discharge, demotion, or suspension is a per
10 se violation of Section 233. An employee working under this policy is entitled to
11 appropriate legal and equitable relief pursuant to Section 233.

12 68. As alleged above, Plaintiff was discharged by Defendants, in part, for
13 taking sick leave for attending to his own illness as well as taking care of his
14 daughter. On information and belief, Defendants similarly denied, discharged,
15 threatened to discharge, demoted, suspended, or in another manner
16 discriminated against all aggrieved employees, for using, or attempting to exercise
17 the right to use, sick leave to attend to an illness or the preventive care of a family
18 member etc. Additionally, as alleged, Defendants also followed an absence
19 control practice towards Plaintiff and all aggrieved employees in violation of Cal.
20 Labor code Section 234.

21
22 69. As a result of the aforesaid violations Plaintiff will seek civil penalties
23 pursuant to Cal. Labor Code § 2699(a) and (f) against Defendants on behalf of
24 himself and all aggrieved employees for violation of Cal. Labor Code §§ 233 and
25 234 in addition to actual damages, reinstatement, and an award of attorney's fees
26 and costs.
27
28

Violation of the California Healthy Workplace Healthy Family Act (HWHFA), and California Labor Code §§ 245 & 246.5 for retaliation for request for leave for treatment and care of employee's family member.

70. The California Healthy Workplace Healthy Family Act states that “[u]pon the oral or written request of an employee, an employer shall provide paid sick days for the ... [d]iagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.” In this case, Defendants clearly denied Mr. Becerra the ability to use sick leave to care for his son’s temporary medical disability. HWHFA further provides:

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

71. In this case, Defendants terminated Mr. Becerra’s employment, in part, because he needed and used sick leave to care for himself as well as a serious medical issue with his daughter. Similarly, on information and belief, Defendants denied all aggrieved employees the right to use accrued days, discharged, threatened to discharge, demoted, suspended, or in some manner discriminated against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited

1 by the HWHFA. There is also a “rebuttable presumption of unlawful retaliation if
2 an employer denies an employee the right to use accrued sick days, discharges,
3 threatens to discharge, demotes, suspends, or in any manner discriminates against
4 an employee within 30 days of any ... [o]pposition by the employee to a policy,
5 practice, or act that is prohibited by this article.” As such, the timing of Mr.
6 Becerra’s termination in relation to his request for accommodation and/or sick
7 leave is presumptively discriminatory, shifting the burden of proof to Defendants
8 to prove otherwise.
9

10 72. The rights afforded to Mr. Becerra and all aggrieved employees
11 under the HWHFA “are in addition to and independent of any other rights,
12 remedies, or procedures available under any other law and do not diminish, alter,
13 or negate any other legal rights, remedies, or procedures available to an aggrieved
14 person.”
15

16 73. By aforesaid acts and omissions of Defendants, and each of them,
17 violated the provisions of Cal. Labor Code 246.5. Pursuant to Cal. Labor Code
18 Section 248.5, Plaintiff and all aggrieved employees entitled to equitable remedy
19 including but not limited to reinstatement, backpay, payment of sick days
20 unlawfully withheld, and interest. Further Plaintiff will also seek to recover
21 reasonable attorney’s fees and costs.
22

23 74. Pursuant to Cal. Labor Code Section 248.5, the Labor Commissioner
24 or the Attorney General may bring a civil action in a court of competent jurisdiction
25 against the employer or other person violating this article and, upon prevailing,
26 shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may
27 be appropriate to remedy the violation, including reinstatement, backpay, the
28

1 payment of sick days unlawfully withheld, the payment of an additional sum, not
2 to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated
3 damages in the amount of fifty dollars (\$50) to each employee or person whose
4 rights under this article were violated for each day or portion thereof that the
5 violation occurred or continued, plus, if the employer has unlawfully withheld paid
6 sick days to an employee, the dollar amount of paid sick days withheld from the
7 employee multiplied by three; or two hundred fifty dollars (\$250), whichever
8 amount is greater; and reinstatement in employment or injunctive relief; and
9 further shall be awarded reasonable attorney's fees and costs, provided, however,
10 that any person or entity enforcing this article on behalf of the public as provided
11 for under applicable state law shall, upon prevailing, be entitled only to equitable,
12 injunctive, or restitutionary relief, and reasonable attorney's fees and costs.
13

14
15 75. For the aforesaid violations by Defendants, and each of them,
16 Plaintiff will also seek civil penalties pursuant to Cal. Labor Code § 2699(a) and (f)
17 against Defendants on behalf of himself and all aggrieved employees for violation
18 of the HWHFA.

19
20 **Violation of Cal. Labor Code §98.6**

21 76. Pursuant to California Labor Code § 98.6(a), a person shall not
22 discharge an employee or in any manner discriminate, retaliate, or take any
23 adverse action against any employee or applicant for employment because the
24 employee or applicant engaged in any legally protected activity.² Under California
25 Labor Code § 98.6(e), an employer is prohibited from retaliating against an
26

27
28 ² Cal. Lab. Code § 98.6.

1 employee because the employee is a family member of a person who has, or is
2 perceived to have, engaged in any whistleblowing conduct.³

3 77. Defendants retaliated against and wrongfully discharged Mr.
4 Becerra because he is an employee who engaged in protected reporting activities
5 in violation of California Labor Code § 98.6. In this case, Mr. Becerra had engaged
6 in various kinds of reporting activities including needing and using medical leave
7 to care for himself and his family member, as well as reporting the conditions at
8 his workplace that posed a risk to his own as well as all aggrieved employees' health
9 and safety. Mr. Becerra's employment was terminated by Defendants solely
10 because he reported unlawful work conditions and sought accommodation for the
11 care and treatment for himself as well as his daughter who had contracted Covid-
12 19. Thus, Mr. Becerra's termination is retaliatory and in violation of Cal. Labor
13 Code § 98.6 because it is connected to, and a consequence of, his actions in
14 reporting his need for accommodation to his employer and reporting unsafe
15 working conditions at In-N-Out Burgers. Defendants similarly discharged and/or
16 otherwise retaliated against all aggrieved employees for engaging in protected
17 reporting and whistleblower activities in violation Cal. Labor Code § 98.6.

20 78. Under Labor Code § 98.6, an aggrieved employee can recover lost
21 wages⁴ and a civil penalty of \$10,000 for each violation.⁵

22 79. Therefore, pursuant to Cal. Labor Code § 98.6(b)(3), Plaintiff is
23 entitled to a civil penalty of \$10,000 for each violation of Cal. Labor Code § 98.6
24 as a result of Defendants retaliatory termination of Plaintiff because of him having
25

26
27 ³ *Id.*

28 ⁴ Cal. Lab. Code § 98.6(b)(1).

⁵ Cal. Lab. Code § 98.6(b)(3).

1 engaged in protected whistleblowing activities. Plaintiff will also seek recover civil
2 penalties on behalf of all Aggrieved Employees discharged, laid off, or otherwise
3 terminated in retaliation for engaging in protected reporting or whistleblower
4 activities.

5
6 **Violation of Cal. Labor Code §1102.5**

7 80. Under California Labor Code § 1102.5(b), an employer “shall not
8 retaliate” against an employee for disclosing information “to a person with
9 authority over the employee or another employee who has the authority to
10 investigate, discover, or correct the violation or noncompliance” that the
11 employee “has reasonable cause to believe . . . discloses a violation of state or
12 federal statute, or a violation of or noncompliance with a local, state, or federal rule
13 or regulation, regardless of whether disclosing the information is part of the
14 employee's job duties.” Likewise, an employer “shall not retaliate” against an
15 employee because “the employee is a family member of a person who has, or is
16 perceived to have, engaged in any acts protected by this section.”

17
18 81. Under *Flait v. North American Watch Corp.*,⁶ to establish a prima
19 facie case, the plaintiff must show that he engaged in a protected activity, his
20 employer subjected him to adverse employment action, and there is a causal link
21 between the protected activity and the employer's action.

22
23 82. Defendants retaliated against and wrongfully discharged Mr.
24 Becerra because he is an employee who engaged in protected reporting activities
25 in violation of California Labor Code § 1102.5. In this case, Mr. Becerra had
26

27 _____
28 ⁶ *Flait v. North American Watch Corp.*, 3 Cal.App.4th 467, 476-79

1 engaged in various kinds of reporting activities including needing and using
2 medical leave to care for himself and his family member, as well as reporting the
3 conditions at his workplace that posed a risk to his own as well as all aggrieved
4 employees' health and safety. Mr. Becerra's employment was terminated by
5 Defendants solely because he reported unlawful work conditions and sought
6 accommodation for the care and treatment for himself as well as his daughter who
7 had contracted Covid-19. Thus, Mr. Becerra's termination is retaliatory and in
8 violation of Cal. Labor Code § 1102.5 because it is connected to, and a
9 consequence of, his actions in reporting his need for accommodation to his
10 employer and reporting unsafe working conditions at In-N-Out Burgers.
11 Defendants similarly discharged and/or otherwise retaliated against all aggrieved
12 employees for engaging in protected reporting and whistleblower activities in
13 violation Cal. Labor Code § 1102.5.
14
15

16 83. Under section 1102.5(b), an employee can recover all actual
17 damages flowing from the retaliation and retaliatory discharge, including
18 compensatory damages, lost wages, lost benefits, and emotional distress.⁷
19 Additionally, because the Defendant is a Corporation, Mr. Becerra can recover a
20 \$10,000 penalty per violation on behalf of himself and all aggrieved employees.⁸
21 The penalty section expressly states that a penalty can be recovered for "each
22 violation" of this section.⁹ Plaintiff seeks to recover a \$10,000 civil penalty per
23 violation pursuant to Cal. Labor Code § 1102.5(f) from Defendant on behalf of
24
25
26

27 ⁷ Cal. Lab. Code § 1105; *Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 241.

28 ⁸ Cal. Lab. Code § 1102.5(f).

⁹ Cal. Lab. Code § 1102.5(f).

1 himself and All Aggrieved employees who were termination in retaliation for their
2 own or they family members' protected reporting activities.

3
4 **Violation of California Labor Code §1198.5 for failure to produce**
5 **personnel file on demand.**

6 84. Cal. Labor Code § 1198.5(a) provides for the right of an employee to
7 inspect personnel records, and requires:

8 85. The employer shall make the contents of those personnel records
9 available to the employee at reasonable intervals and at reasonable times but not
10 later than 30 calendar days from the date the employer receives a written
11 request[.]

12
13 86. In interpreting Cal. Labor Code § 1198.5, the Labor Commissioner's
14 Office has opined that contents that have been routinely held to fall under
15 personnel records include but are not limited to: Application for employment,
16 employment agreement, Acknowledgment of receipt of employee handbook,
17 Payroll authorization form, Records regarding compensation, bonuses, date of
18 hire, seniority and other changes of status, Notices of commendation, warnings,
19 discipline, or termination, Notices of layoff, leave of absence (not containing
20 medical information), and similar matters, Wage attachment or garnishment
21 notices, Education and training notices and records, Performance appraisal or
22 interview evaluation ratings, Attendance and absence records, Promotion
23 recommendations, Production and quality records, Records of grievance affecting
24 employment, Job description, Employee benefit information, etc. Mr. Becerra
25 requested a copy of his personnel/human resources records from Defendants.
26 However, Defendants violated the provisions of California Labor Code Section
27
28

1 1198.5 by failing to provide Mr. Becerra and all aggrieved with full and complete
2 records within the prescribed deadline to produce them in a timely manner. On
3 information and belief, Defendants have denied or delayed production of full and
4 complete personnel files of all aggrieved employees.

5 87. Pursuant to Cal. Labor Code 2699.3(c)(2)(A), Defendant may cure
6 the alleged violation within 33 calendar days of the postmark date of the notice.
7 The Defendant shall give written notice by certified mail within that period of time
8 to the Plaintiff's representative and the Agency if the alleged violation is cured,
9 including a description of actions taken, and no civil action pursuant to Section
10 2699 may commence. If the alleged violation is not cured by Defendant within the
11 33-day period, the Plaintiff will commence a civil action pursuant to Section 2699
12 and seek to recover civil penalties of one hundred dollars (\$100) each on behalf of
13 each aggrieved employee per pay period for the initial violation and two hundred
14 dollars (\$200) each on behalf of himself and each aggrieved employee per pay
15 period for each subsequent violation.
16

17 88. Additionally, Plaintiff and all aggrieved employees will seek to
18 recover statutory penalties as well as an award of reasonable attorneys' fees and
19 costs pursuant to Cal. Labor Code §§1198.5(k)-(l), respectively.
20

21 89. As a result of the acts alleged above, Plaintiff seeks penalties under
22 Labor Code § 2699, et seq. because of Defendants violations of Labor Code
23 §§98.6, 201, 203, 226, 233, 234, 245, 246.5, 1102.5, 1198.5, 6310, 6311,
24 6400, 6401, 6402, 6403, 6404, and 6407.
25

26 90. Further, an employee who prevails in a PAGA action is entitled to
27 recover his or her reasonable attorneys' fees and costs pursuant to Cal. Lab. Code
28

1 §2699(g).

2
3 **SECOND CAUSE OF ACTION**

4 **Unfair Business Practices in Violation of Cal. Business & Prof. Code §§**
5 **17200, et seq.**

6 **(Against All Defendants)**

7 91. Plaintiff realleges and incorporates by reference, as though fully set
8 forth herein, each and every allegation set forth in the paragraphs above.

9 92. Cal. Bus. & Prof. Code § 17200 provides: “As used in this chapter,
10 unfair competition shall mean and include any unlawful, unfair or fraudulent
11 business act or practice and unfair, deceptive, untrue or misleading advertising [or]
12 act[.]” An action under § 17200 for injunctive relief and disgorgement of ill-gotten
13 gains may be brought “by any person acting for the interests of itself, its members
14 or the general public,” even if the person has not been personally harmed by the
15 prohibited conduct. *See also Herr v. Nestle U.S.A., Inc.*, 03 C.D.O.S. 50432 (June 12,
16 2003).

17
18 93. Defendants, and each of them, are "persons" as defined under
19 Business and Professions Code § 17021.35. Each of the directors, officers and/or
20 agents of Wellington Foods, Inc., and DOES 1-100; are equally responsible for the
21 acts of the others as set forth in Business and Professions Code §17095.

22
23 94. Defendant In-N-Out Burger, a California Corporation, owns and
24 operates a regional chain of fast food restaurants and is therefore a covered entity
25 as defined in Business and Professions Code §§ 17021 and 17024.

26 95. Defendants’ violations of the Labor Code and other laws and
27 regulations including their multiple violations of the California Labor Code,
28

1 constitute unfair business practices in violation of the Unfair Competition Law,
2 Business & Professions Code § 17200, *et seq.*

3 96. Shareholders, owners, directors, officers, managing agents and/or
4 sole proprietors misappropriated and converted to themselves for their individual
5 advantage the wages and other monies owed to Plaintiff as alleged throughout the
6 complaint.
7

8 97. Under Unfair Competition Law, employer's failure to pay earned
9 wages was an unlawful business practice. [*Cortez v. Purolator Air Filtration*
10 *Products Co.* (2000) 23 Cal.4th 163] A UCL claim may be predicated on a practice
11 of not paying premium wages for missed, shortened, or delayed meal breaks
12 attributable to the employer's instructions or undue pressure, and unaccompanied
13 by a suitable employee waiver or agreement. [*Safeway Inc. v. Superior Court* 238
14 Cal. App. 4th 1138 (2015)] Defendant's violations of the Labor Code, including
15 their failure to pay final wages due and payable, retaliation for various protected
16 reporting activities, discrimination and retaliation for requesting or exercising the
17 right to use sick leave, and failure to provide accurate wage statements to
18 employees constitute unfair business practices in violation of the Unfair
19 Competition Law, Business & Professions Code § 17200, *et seq.*
20

21 98. As a result of Defendant's unfair business practices, Defendants have
22 reaped unfair benefits and illegal profits at the expense of Plaintiff and all
23 aggrieved employees, and ultimately to members of the public. Defendants'
24 utilization of such unfair business practices constitutes unfair competition and
25 provides an unfair advantage over Defendants' competitors.
26
27
28

99. For the aforesaid acts and omissions of Defendants, and each of them, Plaintiff is entitled to seek preliminary and permanent injunctive relief, including but not limited to, orders that the Defendants account for, disgorge and restore to Plaintiff the compensation unlawfully withheld and for which they were unjustly enriched.

100. Pursuant to Business and Professions Code § 17203, Plaintiff will seek restitution and/or disgorgement of all monies wrongfully retained by Defendants in violation of Business and Professions Code § 17000 et seq. and 17200 et seq.

101. By engaging in violations of well settled public policies codified in California statutes, Defendants sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendants' sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute. Based thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P. §1021.5.

PRAYER

WHEREFORE, the Plaintiff seeks judgment as follows:

1. That the Plaintiff be awarded all costs and litigation expenses incurred in bringing this action;

2. Civil Penalties pursuant to Labor Code Private Attorney General Act of 2004 authorized by California Labor Code § 2698, *et seq* against Defendants for

1 Plaintiff and for all Aggrieved Employees for each initial and subsequent violations
2 as specified in Plaintiff's First Cause of Action, namely:

3 a. A civil penalty against Defendants in the amount of \$100 for the
4 initial violation and \$200 for each subsequent violation as specified
5 in section 2699(f)(2) of the California Labor Code for Plaintiff and
6 all aggrieved employees for each and every pay period during that
7 occurred between January 4, 2020 and the date of judgment and/or
8 approval of settlement for each violation of Labor Code a civil
9 penalty against Defendants in the amount of \$100 for the initial
10 violation and \$200 for each subsequent violation as specified in
11 section 2699(f)(2) of the California Labor Code for Plaintiff and all
12 aggrieved employees for each and every pay period during that
13 occurred between January 4, 2020 and the date of judgment and/or
14 approval of settlement for violations of Labor Code §§ 201, 203,
15 233, 234, 245, 246.5, 6310, 6311, 6400, 6401, 6402, 6403,
16 6404, and 6407;

17
18
19 b. A civil penalty in the amount of \$250 per employee per violation for
20 the initial violation and \$1000 per employee per violation for each
21 subsequent violation as specified by Labor Code §§ 2699 (f) and
22 226.3 of the for each and every pay period during that occurred
23 between January 4, 2020 and the date of judgment and/or approval
24 of settlement for violations of Labor Code § 226(a);

25
26 c. A civil penalty in the amount of \$10,000 for each violation as
27 specified by Labor Code §§ 2699 (f) and 98.6 and 1102.5 that
28

1 occurred between January 4, 2020 and the date of judgment and/or
2 approval of settlement for violations of Sections 98.6 and 1102.5 of
3 the Cal. Labor Code;

4 d. A civil penalty in the amount of one hundred dollars (\$100) for the
5 initial violation and two hundred dollars (\$200) for each
6 subsequent violation as specified by Labor Code §§ 2699 (f) for
7 each and every pay period that occurred between January 4, 2020
8 and the date of judgment and/or approval of settlement for
9 violations of Labor Code § 1198.5.
10

11 e. An award of reasonable attorney's fees against Defendants as
12 specified in Labor Code § 2699(g)(1), for all the work performed by
13 the undersigned counsel in connection with the PAGA claims;
14

15 f. An award of all costs incurred by the undersigned counsel for
16 Plaintiff in connection with Plaintiff's and the aggrieved
17 employees' claims against Defendants as provided for in Labor
18 Code § 2699(g)(1).

19 3. For reasonable attorneys' fees and costs incurred in bringing this action
20 as follows for Plaintiff's Second Cause of Action pursuant to Cal. Code Civ. Proc.
21 § 1021.5;
22

23 4. For general damages, according to proof, including in the amount of all
24 unpaid and wrongfully withheld wages, including premium wages;

25 5. Damages, statutory penalties and/or interest pursuant to Cal. Labor
26 Code §§203, 226, 233, 234, 245, 246.5, 1102.5, and 1198.5;
27
28

