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Assigned for all Purposes
Judge Peter Wilson
cx-102

12 Attorneys for Plaintiff,
13 DAWN ANDERSON-BISHOP, and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

DAWN ANDERSON-BISHOP, as an “aggrieved
employee” on behalf of other similarly situated
“aggrieved employees” under the Labor Code
Private Attorney General Act of 2004,

Plaintiff,

vs.

SHARI’S MANAGEMENT CORPORATION, a
Delaware corporation; FRI-M, LLC, a Delaware
limited liability company; and DOES 1–50,
inclusive,

Defendants.

Case No.: 30-2021-01199018-CU-OE-CXC

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

JURY TRIAL DEMANDED



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

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”), against Defendants SHARI’S MANAGEMENT CORPORATION, a Delaware
7 corporation, FRI-M, LLC, a Delaware limited liability company, and DOES 1-50, inclusive
(collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her, the State of California, and other similarly situated and aggrieved current and former
10 employees who worked in California as hourly, non-exempt employees, for civil penalties and
11 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest and
12 meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned
13 for all hours worked at the correct rates of pay; (4) Provide accurate written wage statements; (5)
14 Timely pay wages during and upon termination of employment and; (6) Maintain accurate
15 employment records. Accordingly, Plaintiff now seeks to recover civil penalties and related relief
through this representative action.

16 **II. THE PARTIES**

17 3. Plaintiff, an individual and resident of California, in approximately July 1985,
18 began working for Defendants as an hourly server at their restaurant located at 23000 Lake Forest
19 Drive in Laguna Hills, California. Defendants employed her continuously from that date until on
20 or about October 18, 2020, when she began a leave of absence due to unsafe conditions during
21 the Covid-19 pandemic. On or about November 17, 2020, Plaintiff did not come back from her
22 leave of absence and resigned her employment with Defendants. Plaintiff last performed her
23 duties for Defendants on October 18, 2020.

24 4. Defendant SHARI’S MANAGEMENT CORPORATION, is a corporation
25 organized and existing under the laws of Delaware and a citizen of California based on Plaintiff’s
information and belief.

26 5. Defendant FRI-M, LLC, is a limited liability company organized and existing
27 under the laws of Delaware and a citizen of California based on Plaintiff’s information and belief.

28 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of



1 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
2 is informed and believes and thereon alleges that said Defendants are legally responsible for the
3 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
4 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
5 when ascertained.

6 **A. THE AGGRIEVED EMPLOYEES**

7 7. The “Aggrieved Employees” are all individuals currently and formerly employed
8 by Defendants in California, as hourly, non-exempt employees, including, but not limited to
9 servers, hosts, cooks, shift leaders, and persons in comparable positions, at any time during the
10 period of February 18, 2020 and entry of judgment (“the PAGA Period”).

11 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
12 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
13 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
14 and scope of such agency or employment, and with the approval and ratification of each of the
15 other Defendants.

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

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

25 **III. FACTUAL ALLEGATIONS**

26 11. In approximately July 1985, Plaintiff began working for Defendants as an hourly
27 server at their restaurant located at 23000 Lake Forest Drive in Laguna Hills, California.
28 Defendants employed her continuously from that date until on or about October 18, 2020, when
she began a leave of absence due to unsafe conditions during the Covid-19 pandemic. On or about
November 17, 2020, Plaintiff did not come back from her leave of absence and resigned her
employment with Defendants. Plaintiff last performed her duties for Defendants on October 18,



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2020.

12. At all relevant times, Defendants issued wages to Plaintiff and the Aggrieved Employees on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times, Defendants classified Plaintiff and the Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and Wage Order.

13. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely meal periods. Due to the workload and failure to hire sufficient staff members, Defendants denied Plaintiff and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Defendants also denied meal periods to Plaintiff and the Aggrieved Employees because Defendants staffed insufficient employees to cover for them during rest breaks and meal periods. On those seldom occasions when Plaintiff and the Aggrieved Employees did attempt to take their 30-minute meal period, Defendants' staff or management often interrupted them with demands for help in serving customers, cleaning, or other related job duties.

14. Moreover, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees with rest periods in violation of California law. Due to the high workload and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take 10-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement.

15. Defendants failed to hire sufficient staff members to cover and support Plaintiff and the Aggrieved Employees so they could take duty-free, 10-minute rest periods and duty-free, 30-minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with timely meal periods. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and the Aggrieved Employees with timely rest periods. Plaintiff complained to management about Defendants' meal and rest period violations. Defendants took no action to resolve her complaints.

16. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to use their personal mobile phones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did



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1 they provide them with mobile phones as an alternative. Due to frequent last-minute changes in
2 the work schedule, Defendants' management frequently contacted Plaintiff and the Aggrieved
3 Employees on their personal mobile phones to coordinate their work hours.

4 17. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
5 to perform work while clocked-out and failed to compensate them for this time. Defendants
6 required Plaintiff and the Aggrieved Employees to coordinate schedules, and have business-
7 related calls with management, all while clocked-out. Defendants also required Plaintiff and the
8 Aggrieved Employees to perform work duties before clocking-in for the morning shifts, including
9 but not limited to, disarming the alarm, preparing the ice buckets, washing dishes from the
10 previous shift, setting tables, preparing the coffee and ice teas, and preparing fruit and oatmeal.
11 Further, Defendants instructed Plaintiff and the Aggrieved Employees to clock-out at specific
12 times, even while still working. At all relevant times, Defendants instructed Plaintiff and the
13 Aggrieved Employees to perform necessary work duties after they clocked-out for the day,
14 including but not limited to washing dishes, bussing tables, sweeping the floor, serving customers,
15 and setting the alarm. Defendants' management threatened Plaintiff and the Aggrieved
16 Employees with termination of their employment if these duties were not completed before the
17 employees left the restaurant. Defendants failed to compensate Plaintiff and the Aggrieved
18 Employees for this work performed off-the-clock.

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

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

- 27 A. Not provided with all off duty meal periods;
- 28 B. Not provided with all rest break periods as required by law;
- C. Not paid one hour's pay for each workday in which Defendants failed to
provide them with one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to



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1 provide them with one or more timely meal periods;

2 E. Not paid all wages earned, including, but not limited to, regular and
3 overtime wages for work performed while clocked out;

4 F. Not indemnified for all necessary business expenditures incurred during
5 the discharge of their duties;

6 G. Not provided with accurate and complete wage statements; and

7 H. Not timely paid all earned and unpaid wages during their employment with
8 Defendants and at the time such employment ended.

9 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(Lab. Code §§ 2698, *et seq.*)**

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

14 20. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 21. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
16 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

17 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

18 22. In relevant part, California Labor Code § 1198 states:

19 The maximum hours of work and the standard conditions of labor
20 fixed by the commission shall be the maximum hours of work and
21 the standard conditions of labor for employees. The employment
22 of any employee for longer hours than those fixed by the order or
23 under conditions of labor prohibited by the order is unlawful.

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

25 An employer shall not employ an employee for a work period of
26 more than five hours per day without providing the employee with
27 a meal period of not less than 30 minutes, except that if the total
28 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
employer and employee.

An employer shall not employ an employee for a work period of
more than 10 hours per day without providing the employee with
a second meal period of not less than 30 minutes, except that if the
total hours worked is no more than 12 hours, the second meal



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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

24. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

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

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

Meal Periods

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

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



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1 26. In relevant part, California Labor Code § 226.7 states:

2 (b) An employer shall not require an employee to work during
3 a meal or rest period mandated pursuant to an applicable statute,
4 or applicable regulation, standard, or order of the Industrial
5 Welfare Commission, the Occupational Safety and Health
6 Standards Board, or the Division of Occupational Safety and
7 Health.

8 (c) If an employer fails to provide an employee a meal period
9 or rest period in accordance with a state law, including, but not
10 limited to, an applicable statute or applicable regulation, standard,
11 or order of the Industrial Welfare Commission, the Occupational
12 Safety and Health Standards Board, or the Division of
13 Occupational Safety and Health, the employer shall pay the
14 employee one additional hour of pay at the employee's regular rate
15 of compensation for each work day that the meal or rest period is
16 not provided.

17 27. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
18 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
19 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
20 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

21 28. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
22 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
23 major fraction thereof.

24 29. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
25 with all required 30-minute duty free meal periods and 10-minute rest periods free from any work
26 duties in accordance with the Wage Order.

27 30. At all relevant times, Defendants failed to provide Plaintiff and the Class
28 Members with all timely 30-minute duty-free meal periods within the first five hours of work.
29 Defendants also denied Plaintiff and the Class Members their 30-minute off-duty meal period
30 because there were insufficient employees to cover for them during rest breaks and meal periods.
31 Defendants also failed to authorize and permit Plaintiff and the Class Members to take 10-minute
32 rest breaks every four hours worked or major fraction thereof as required by the Wage Order.
33 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
34 Plaintiff and the Class Members with timely meal and rest periods.

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1 31. Defendants also failed to authorize and permit Plaintiff and the Aggrieved
2 Employees to take 10-minute rest breaks every four hours worked or major fraction thereof as
3 required by the Wage Order. Moreover, Defendants failed to pay Plaintiff and the Aggrieved
4 Employees premium wages on workdays they failed to provide them with 10-minute rest periods
5 every four hours worked or major fraction thereof.

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

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

12 33. Section 2 of the Wage Order defines “hours worked” as “the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so.”

15 34. Section 3 of the Wage Order states:

16 (A) Daily Overtime - General Provisions

17 (1) The following overtime provisions are applicable to employees 18 years of
18 age or over and to employees 16 or 17 years of age who are not required by law
19 to attend school and are not otherwise prohibited by law from engaging in the
20 subject work. Such employees shall not be employed more than eight (8) hours in
21 any workday or more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
23 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
24 a day’s work. Employment beyond eight (8) hours in any workday or more than
25 six (6) days in any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any workday,
and for the first eight (8) hours worked on the seventh (7th) consecutive day of
work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of
12 hours in any workday and for all hours worked in excess of eight (8) hours on
the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-
time salaried employee shall be computed by using the employee’s regular hourly



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1 salary as one-fortieth (1/40) of the employee's weekly salary.

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

5 36. Labor Code section 510 states:

6 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
7 in one workday and any work in excess of 40 hours in any one workweek and the
8 first eight hours worked on the seventh day of work in any one workweek shall
9 be compensated at the rate of no less than one and one-half times the regular rate
10 of pay for an employee. Any work in excess of 12 hours in one day shall be
11 compensated at the rate of no less than twice the regular rate of pay for an
12 employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate
of pay of an employee. Nothing in this section requires an employer to combine
more than one rate of overtime compensation in order to calculate the amount to
be paid to an employee for any hour of overtime work.

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

15 38. Labor Code section 1197 makes it unlawful for an employer to pay an employee
16 less than the minimum wage required under the applicable Wage Order for all hours worked
17 during a payroll period.

18 39. Labor Code section 1198 makes it unlawful for an employer to employ an
19 employee under conditions that violate the Wage Order.

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

24 41. At all relevant times, at Defendants' direction, Plaintiff and the Aggrieved
25 Employees have worked off-the-clock without pay, including before clocking-in for their shifts,
26 and after clocking-out at the end of their shifts. Such work included: disarming the alarm, setting
27 tables, washing dishes, bussing tables, sweeping the floor, and serving customers.

28 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



1 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
2 required by California law.

3 **C. FAILURE TO INDEMNIFY**

4 43. In pertinent part, California Labor Code § 2802(a) states:

5 “An employer shall indemnify his or her employee[s] for all
6 necessary expenditures incurred by the employee in direct
7 consequence of the discharge of his or her duties.”

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

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

13 46. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
15 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
16 incurred during the course of performing their duties.

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

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

23 48. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
24 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
25 the employer fails to provide accurate and complete information as required by California Labor
26 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
27 alone one or more of the following:

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

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

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

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

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

9 49. "Promptly and easily determine," as stated in California Labor Code § 226(e),
10 means a reasonable person would be able to readily ascertain the information without reference
11 to other documents or information.

12 50. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved
13 Employees with all meal and rest periods in compliance with California law. They also failed to
14 provide them with premium wages on workdays they failed to provide them with one or more
15 meal and/or rest periods in compliance with California law. Further, Defendants failed to
16 compensate Plaintiff and the other Aggrieved Employees for all hours worked. As a result,
17 Defendants have failed to properly itemize Plaintiff and the other Aggrieved Employees' gross
18 and net wages earned, total hours worked, hourly rate of pay, the corresponding number of hours
19 worked at each hourly rate, and other requirements of California Labor Code § 226. Defendants
20 failed to state in the wage statements they issued to Plaintiff and the Aggrieved Employees all
21 their hours worked and wages earned, including, but not limited to, regular and overtime wages
22 for work they performed off-the-clock (as described above). As a result, Defendants have violated
23 California Labor Code § 226.

24 51. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
25 accurate wage statements was knowing and intentional. Defendants had the ability to provide
26 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
27 provided wage statements that Defendants knew were not accurate.

28 52. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
accurate wage statements were violated and they were misled about the amount of wages they
had actually earned and were owed. In addition, the absence of accurate information on their wage



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1 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
2 discovery and mathematical computations to determine the amounts of wages owed, has caused
3 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
4 submission of inaccurate information about wages to state and federal government agencies.
5 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
6 statements whether Defendants complied with their obligations under California Labor Code
section 226(a).

7 **E. UNTIMELY WAGES DURING EMPLOYMENT**

8 53. Labor Code § 204 states

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

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

19 (2) An employer is in compliance with the
20 requirements of subdivision (a) of Section 226 relating to
21 total hours worked by the employee, if hours worked in
22 excess of the normal work period during the current pay
23 period are itemized as corrections on the paystub for the
24 next regular pay period. Any corrections set out in a
subsequently issued paystub shall state the inclusive dates
of the pay period for which the employer is correcting its
initial report of hours worked.

25 (c) However, when employees are covered by a collective
26 bargaining agreement that provides different pay
27 arrangements, those arrangements shall apply to the
covered employees.

28 (d) The requirements of this section shall be deemed satisfied



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by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

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

F. UNTIMELY FINAL WAGES

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

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

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

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

G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

59. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked



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1 daily by and the wages paid to, and the number of piece-rate units earned by
2 and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments. These records shall be kept in accordance with rules
4 established for this purpose by the commission, but in any case shall be kept
5 on file for not less than three years. An employer shall not prohibit an
6 employee from maintaining a personal record of hours worked, or, if paid on
7 a piece-rate basis, piece-rate units earned.

8
9
10 60. Labor Code § 1174.5 states:

11 Any person employing labor who willfully fails to maintain the records
12 required by subdivision (c) of Section 1174, or to allow any member of the
13 commission or employees of the division to inspect records pursuant to
14 subdivision (b) of Section 1174, shall be subject to a civil penalty of five
15 hundred dollars (\$500).

16 61. Section 7 of the Wage Order states,

17 (a) Every employer shall keep accurate information with respect to each
18 employee including the following:

- 19 1. Full name, home address, occupation, and social security number.
- 20 2. Birth date, if under 18 years, and designation as a minor.
- 21 3. Time records showing when the employee begins and ends each
22 work period. Meal periods, split shift intervals and total daily
23 hours worked shall also be recorded. Meal periods during which
24 operations cease and authorized rest periods need not be recorded.
- 25 4. Total wages paid each payroll period, including value of board,
26 lodging, or other compensation actually furnished to the
27 employee.
- 28 5. Total hours worked in the payroll period and applicable rates of
pay. This information shall be made readily available to the
employee upon reasonable request.
6. When a piece rate or incentive plan is in operation, piece rates or
an explanation of the incentive plan formula shall be provided to
employees. An accurate production record shall be maintained by
the employer.

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

63. On information and belief, Defendants have willfully failed to maintain the
records required by § 1174 and Wage Order, including, but not limited to, the total premium
wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked
by Plaintiff and the Aggrieved Employees.

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1 **H. CIVIL PENALTIES SOUGHT**

2 64. Labor Code § 204 states

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

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

14 (2) An employer is in compliance with the requirements of subdivision (a) of
15 Section 226 relating to total hours worked by the employee, if hours worked in
16 excess of the normal work period during the current pay period are itemized as
17 corrections on the paystub for the next regular pay period. Any corrections set out
18 in a subsequently issued paystub shall state the inclusive dates of the pay period
19 for which the employer is correcting its initial report of hours worked.

20 (c) However, when employees are covered by a collective bargaining
21 agreement that provides different pay arrangements, those arrangements shall
22 apply to the covered employees.

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

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

29 66. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

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

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1 68. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
2 Employees are entitled to recover civil penalties for each of the Defendants' violations of
3 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
4 2802 during the applicable limitations period in the following amounts:

5 A. For violations of California Labor Code § 204, one hundred dollars
6 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
7 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
8 (penalty amounts established by California Labor Code § 210).

9 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
10 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
11 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

12 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
13 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
14 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
15 each pay period for which the employee was underpaid (penalty amounts established by
16 California Labor Code § 558).

17 D. For violations of California Labor Code § 1174, five hundred dollars
18 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
19 by Labor Code § 1174.5).

20 E. For violations of California Labor Code § 1197, one hundred dollars
21 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
22 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
23 (regardless of whether the initial violations were intentionally committed) (penalty amounts
24 established by California Labor Code § 1197.1).

25 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
26 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
27 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
28 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

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

2 69. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated February 18, 2021, Plaintiff gave written notice by certified
4 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
5 provisions of the California Labor Code alleged to have been violated, including the facts and
6 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
7 dated February 17, 2021 is attached hereto as Exhibit A. The LWDA has not responded to
8 Plaintiff’s letter.

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

12 **VI. PRAYER FOR RELIEF**

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

- 15 A. Civil penalties;
16 B. Costs of suit;
17 C. Reasonable attorneys’ fees; and
18 D. Such other relief as the Court deems just and proper.

19 **VII. DEMAND FOR JURY TRIAL**

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

22 Respectfully submitted,

23 THE SPIVAK LAW FIRM

24 Dated: April 27, 2021

25 By 
26 DAVID SPIVAK
27 MARALLE MESSRELIAN,
28 MAYA CHEAITANI, Attorneys for Plaintiff,
DAWN ANDERSON-BISHOP, and all others
similarly situated

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 17, 2021

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

Re: *Dawn Anderson Bishop / Shari's Management Corporation*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Dawn Anderson Bishop (hereafter "Bishop") provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as hourly employees, including but not limited to servers, hosts, cooks, shift leaders, and comparable employees (hereafter "Aggrieved Employees"), by Shari's Management Corporation, a Delaware corporation, and Fri-M, LLC, a Delaware limited liability company (hereafter collectively referred to as "Shari's"), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

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

Statement of Facts

In approximately July 1985, Bishop began working for Shari's at its restaurant located at 23000 Lake Forest Drive in Laguna Hills, California, as an hourly server. Shari's employed her continuously from that date until on or about October 18, 2020, when she began a leave of absence due to unsafe conditions during the Covid-19 pandemic. Shari's did not properly enforce the use of masks or sanitizer in the restaurant. Shari's was also aware of multiple cooks afflicted with the COVID-19 virus, however, it permitted the cooks to continue working. On or about November 17, 2020, Bishop did not come back from her leave of absence and resigned her employment with Shari's because of the continuing lack of COVID-19 precautions. She last performed her duties for Shari's on October 18, 2020.

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

At all relevant times, Shari's failed to provide Bishop and the Aggrieved Employees with all timely meal periods. Due to the workload and failure to hire sufficient staff members, Shari's denied Bishop and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Shari's also denied meal periods to Bishop and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods. On those seldom occasions when Bishop and the Aggrieved Employees did attempt to take their 30-minute meal period, Shari's staff or management often interrupted them with demands for help in serving customers, cleaning or other related job duties.

Moreover, Shari's failed to authorize and permit Bishop and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, Shari's failed to authorize and permit Bishop and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four

hours worked or major fraction thereof. Shari's did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement.

Shari's failed to hire sufficient staff members to cover and support Bishop and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, Shari's failed to pay premium wages for days on which it failed to provide Bishop and the other Aggrieved Employees with timely meal periods. Shari's also failed to pay premium wages for days on which it failed to provide Bishop and the other Aggrieved Employees with timely rest periods. Bishop complained to management about Shari's' meal and rest period violations. Shari's took no action to resolve her complaints.

At all relevant times, Shari's required Bishop and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. At all relevant times, Shari's required Bishop and the Aggrieved Employees to use their personal mobile phones to perform their job duties but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones as an alternative. Due to frequent last-minute changes in the work schedule, Shari's' management frequently contacted Bishop and the Aggrieved Employees on their personal mobile phones to coordinate their work hours.

At all relevant times, Shari's required Bishop and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Shari's required Bishop and the Aggrieved Employees to coordinate schedules, and have business-related calls with management, all while clocked-out. Shari's also required Bishop and the Aggrieved Employees to perform work duties before clocking-in for the morning shifts, including but not limited to, disarming the alarm, preparing the ice buckets, setting up the hand-sanitizers, washing dishes from the previous shift, setting tables, preparing the coffee and iced teas, and preparing fruit and oatmeal. Further, Shari's' management instructed Bishop and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Shari's instructed Bishop and the Aggrieved Employees to perform necessary work duties after they clocked-out for the day,

including but not limited to washing dishes, bussing tables, sweeping the floor, serving customers, and setting the alarm. Shari's management threatened Bishop and the Aggrieved Employees with termination of their employment if these duties were not completed before the employees left the restaurant. Shari's failed to compensate Bishop and the Aggrieved Employees for this work performed off-the-clock.

Shari's failed to issue to Bishop and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. Shari's also failed to timely pay Bishop and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Shari's failed to maintain accurate employee records of Bishop and the Aggrieved Employees.

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

- (a) Shari's failed to pay Bishop and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;
- (b) Shari's failed to provide Bishop and the Aggrieved Employees all meal periods and rest periods in compliance with California law;
- (c) Shari's failed to compensate Bishop and the Aggrieved Employees at one hour's pay for each day in which Shari's failed to provide them with their rest breaks as required by law;
- (d) Shari's failed to compensate Bishop and the Aggrieved at one hour's pay for each day in which it failed to provide them with their meal periods as required by law;

- (e) Shari's failed to indemnify Bishop and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) Shari's failed to provide Bishop and the other Aggrieved Employees with accurate wage statements; and
- (g) Shari's failed to timely pay Bishop and the other Aggrieved Employees all earned and unpaid wages during their employment with Shari's.

Accordingly, Bishop now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Shari's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, Shari's operated restaurants. Accordingly, Bishop and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

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

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(K) of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek

is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

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

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

At all relevant times, at Sharis' direction, Bishop and the Aggrieved Employees have worked off the clock without pay, including before clocking-in for their shifts and after clocking-out at the end of their shifts. Such work included: dismantling the alarm, setting tables, washing dishes, bussing tables, sweeping the floor, and serving customers.

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

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
3. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

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

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period

shall be considered an “on duty” meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

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

days on which it failed to provide Bishop and the other Aggrieved Employees with timely meal periods. Also, when Bishop and the Aggrieved Employees did take their 30-minute meal period, they were often interrupted by staff or management with demands for help in serving customers, cleaning or other related job duties.

Accordingly, Bishop now seeks civil penalties for these Labor Code violations that Shari's has committed against her and the Aggrieved Employees as follows:

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

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

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

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

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Due to high workload and low staffing levels, Shari's failed to authorize and permit Bishop and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Shari's did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, Shari's failed to pay Bishop and the Aggrieved Employees premium wages on workdays it failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

Accordingly, Bishop now seeks civil penalties for these Labor Code violations that Shari's has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

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Failure to Reimburse for Expenses

(Lab. Code § 2802 and 1198)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Shari's required Bishop and the other Aggrieved Employees to use their personal mobile phones for work related activities without reimbursing them for mobile phone expenses. Accordingly, Bishop seeks civil penalties for these Labor Code violations that Shari's has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements

(Lab. Code § 226)

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

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Shari's violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Shari's failed to state in the wage statements it issued to Bishop and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to

clocking-in at the beginning of their shifts and after clocking-out (as described above).

Sharis' violation was knowing and intentional. Bishop and the Aggrieved Employees complained about Sharis' Labor Code violations to management. Bishop and the Aggrieved Employees notified Shari's that it failed to provide them with duty-free meal and rest periods. Shari's ignored their complaints.

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

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

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Shari's failed to pay Bishop and the other Aggrieved Employees for work performed before they clocked-in and after they clocked-out. Shari's failed to provide Bishop and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Shari's also failed to provide Bishop and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Shari's failed to timely pay all earned minimum, overtime, and

premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Bishop now seeks civil penalties for the Labor Code violations that Shari's has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Shari's failed to pay Bishop and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of

their employment with Bishop. By failing to pay Bishop and the Aggrieved Employees as set forth above by such time, Shari's is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Bishop seeks civil penalties from Shari's as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records

showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

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

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

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

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Dawn Anderson Bishop
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