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on behalf of herself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES-CENTRAL DISTRICT

SILVIA OSUNA, on behalf of herself and all other aggrieved employees, PLAINTIFF, vs. M. PERNECKY MANAGEMENT CORP., a California corporation d/b/a/ McDonald's; MICHAEL EMMETT PERNECKY, an individual; and DOES 1 through 100, inclusive, DEFENDANTS.	CASE NO.: 21STCV19885 **REPRESENTATIVE ACTION** COMPLAINT FOR VIOLATION OF THE CALIFORNIA PRIVATE ATTORNEYS' GENERAL ACT OF 2004, CALIFORNIA LABOR CODE § 2698 *et seq.* **DEMAND FOR JURY TRIAL**

Plaintiff SILVIA OSUNA ("PLAINTIFF"), on behalf of herself and all other aggrieved employees, hereby demands a jury trial, and alleges as follows:

INTRODUCTION

1. PLAINTIFF brings this action on behalf of herself and all other aggrieved employees of Defendants M. PERNECKY MANAGEMENT CORP., MICHAEL EMMETT PERNECKY, and DOES 1 through 100, inclusive (collectively, "DEFENDANTS") to recover civil penalties arising from unpaid wages earned and due, including but not limited to unpaid and unlawfully calculated overtime compensation, unlawful meal and rest break policies and practices, failure to pay all wages due to discharged or quitting employees, failure to maintain required records, failure to provide accurate itemized wage statements, and failure to timely pay wages during employment.

THE PARTIES

2. PLAINTIFF is a resident of the State of California. At all times relevant to this action, PLAINTIFF was employed by DEFENDANTS in the County of Los Angeles, State of California as an hourly, non-exempt employee.

3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant M. PERNECKY MANAGEMENT CORP. d/b/a McDonald's ("M. PERNECKY MANAGEMENT") is, and all times relevant to this action was, a corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and based thereon alleges, that Defendant M. PERNECKY MANAGEMENT is authorized to transact and conduct business in the State of California and does transact and conduct business in the County of Los Angeles, State of California. Further, M. PERNECKY maintains grounds, facilities, and offices in the County of Los Angeles, State of California. M. PERNECKY employed PLAINTIFF and other aggrieved persons within the State of California.

4. PLAINTIFF is informed and believes, and thereon alleges, that M. PERNECKY MANAGEMENT owns and operates McDonald's restaurant(s).

5. PLAINTIFF is informed and believes, and thereon alleges, that Defendant MICHAEL EMMETT PERNECKY, an individual, is an owner and Chief Executive Officer of Defendant M. PERNECKY MANAGEMENT.

6. At this time, the true names and capacities of DOES 1 through 100, inclusive, are unknown to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved employees' injuries and damages were proximately caused by the conduct of said DOE defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities of said DOE defendants when such information is ascertained.

7. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action, DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated by his, her, or its codefendants, and each was the alter ego of the other.

8. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all wages earned and due, through methods and schemes which include, but are not limited to: failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to timely pay wages during employment; and requiring, permitting, or suffering the employees to work off the clock, in violation of the California Labor Code ("Labor Code") and applicable Industrial Welfare Commission ("IWC") Wage Order(s).

9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of, each of the other DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

10. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are liable for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7, 1193.6, or 1194.

JURISDICTION AND VENUE

11. The Superior Court of the State of California has jurisdiction in this matter because PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in California and regularly conduct business in the State of California.

12. No federal question is at issue because the claims are based exclusively on California state law.

13. Venue is proper in this judicial district and the County of Los Angeles, California because among other things, PLAINTIFF and the other aggrieved employees performed work for DEFENDANTS in the County of Los Angeles; DEFENDANTS maintain grounds, facilities, and offices, and transact business in the County of Los Angeles; DEFENDANTS' unlawful policies, procedures, and practices, which are the subject of this action were applied, at least in part, to PLAINTIFF and other aggrieved employees in the County of Los Angeles; and DEFENDANTS' unlawful acts and omissions occurred in the County of Los Angeles.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code Sections 2698-2699.5, PLAINTIFF brings this action on behalf of herself and all current and former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the

period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the "PAGA PENALTY PERIOD").

15. In accordance with Labor Code Section 2699.3, on or about February 1, 2021, PLAINTIFF gave written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated, including the facts and theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent by certified mail to DEFENDANTS on February 1, 2021. A copy of PLAINTIFF'S PAGA Notice is attached as Exhibit "1."

16. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice. Since PLAINTIFF has waited more than sixty-five (65) days from both the February 1, 2021 postmark date of PLAINTIFF's PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements set forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

FACTUAL ALLEGATIONS

Failure to Provide Complaint Meal Periods and Failure to Pay Premium Wages

(Labor Code §§ 226.7, 512; IWC Wage Order No. 5, § 11)

17. Labor Code Section 512 provides in relevant part, "An employer shall 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 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 period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

18. IWC Wage Order 5 § 11 states, "(A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with 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 employer and 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. 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. (B) An employer may not employ an employee for a work period of more than ten (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."

19. Under California law, when an employee works for a work period of more than five (5) hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*, no later than the start of the employee's sixth hour of work. When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work, *i.e.*, no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

20. Labor Code Section 226.7, subdivision (a) states, "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 . . . ."

21. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS have a practice of altering the time records of PLAINTIFF and other aggrieved employees to falsely reflect that PLAINTIFF and other aggrieved employees received timely, compliant, off-duty meal periods when, in fact, PLAINTIFF and other aggrieved employees did not.

22. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal policies, procedures, and practices, DEFENDANTS failed to provide timely, compliant, off-duty meal periods to

PLAINTIFF and other aggrieved employees under Labor Code Sections 226.7 and 512 and IWC Order No. 5-2001, § 11 and otherwise required, suffered or permitted PLAINTIFF and other aggrieved employees to take less than 30-minute meal periods, or to work through them.

23. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period violations.

24. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and IWC Wage Order No. 5-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees who were not provided with a meal period, in accordance with the applicable IWC Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a complaint meal period was not provided.

Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages

(Labor Code §§ 226.7; IWC Wage Order No. 5-2001, § 12)

25. At all relevant times, as part of DEFENDANTS' illegal policies, procedures, and practices to deprive their current and former non-exempt employees all wages earned and due, DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 5-2001, § 12.

26. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break violations.

27. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a compliant rest period was not provided.

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Failure to Pay Overtime Wages

(Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3)

28. Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 5-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of ten (10) hours per day and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of eight (8) on the seventh (7th) day of work in the workweek.

29. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of DEFENDANTS entitled to the protections of Labor Code Sections 510 and 1194 and IWC Wage Order No. 5-2001.

30. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code Sections 510, 1194, and IWC Wage Order No. 5-2001, § 3; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off the clock, including for the maintenance of mandatory work uniforms which, as a result of DEFENDANTS' food operations require frequent cleaning and washing; requiring, permitting, or suffering PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF'S and other aggrieved employees' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

31. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours worked in violation of Labor Code Sections 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3.

Failure to Pay Minimum Wages

(Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4)

32. Under Labor Code Sections 1194 and 1197 and IWC Wage Order No. 5-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

33. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD and in violation of Labor Code Sections 1194 and 1197 and IWC Wage Order No. 5-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off the clock including for the maintenance of mandatory work uniforms which, as a result of DEFENDANTS' food operations require frequent cleaning and washing; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF'S and other aggrieved employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other aggrieved employees for each pay period; and other methods to be discovered.

Failure to Timely Pay Wages During Employment

(Labor Code § 204)

34. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 1st and 10th day of the following calendar month.

35. Labor Code Section 204 further provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

36. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the next regular payroll period as required by Labor Code Section 204.

Failure to Pay All Wages Due Upon Separation of Employment

(Labor Code §§ 201, 202, 203)

37. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

38. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

39. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued wages to the employee for up to thirty (30) days.

40. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to aggrieved employees who were discharged or who quit.

Failure to Furnish Accurate Itemized Wage Statements

(Labor Code § 226(a); IWC Wage Order No. 5-2001, § 7)

41. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of

piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and only the last four digits of his or her social security number or employee identification number, the name and address of the legal entity or entities employing PLAINTIFF and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226, subdivision (a) and IWC Wage Order No. 5-2001 § 7.

42. During the PAGA PENALTY PERIOD, and as a result of DEFENDANTS' unlawful policies and practices and failure to pay all earned wages DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in accordance with Labor Code Section 226, subdivision (a).

43. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from the wage statement alone any of the following: gross wages earned, total hours worked by the employee, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, the name and address of the legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Failure to Maintain Accurate Records

(Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7)

44. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor

Code Sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order No. 5-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Failure to Provide Suitable Seating

(IWC Wage Order No. 5-2001, § 14(A); 8 C.C.R. § 11050(14))

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

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

47. Labor Code Section 1198 also provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

48. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to provide PLAINTIFF and other aggrieved employees suitable seating when the nature of these employees' work reasonably permitted seating.

49. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to provide an adequate number of suitable seats in reasonable proximity to work areas so that PLAINTIFF and other aggrieved employees were unable to sit when doing so did not interfere with the performance of their duties.

50. As a result, DEFENDANTS violated California Labor Code Section 1198 and Wage Order 5-2001, Section 14 by failing to provide suitable seats.

Failure to Reimburse Business Expenses

(Labor Code § 2802; IWC Wage Order No. 5-2001, § 9)

51. Labor Code Section 2802 requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

52. IWC Wage Order No. 5-2001, § 9(A) provides that if an employer requires a uniform or part of a uniform to be worn by the employee, the employer must provide and maintain the uniform, or pay for the maintenance of that uniform.

53. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to indemnify PLAINTIFF and all other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of DEFENDANTS including, but not limited to, failing to maintain work uniforms which DEFENDANTS required PLAINTIFF and other aggrieved employees to wear.

54. DEFENDANTS' failure is a violation of Labor Code Section 2802 and IWC Wage Order No. 5-2001, § 9(A).

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code §§ 2698 *et seq*.)

(AGAINST ALL DEFENDANTS)

55. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 54, above.

56. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section 2699, subdivision (c), and a proper representative to bring a civil action on behalf of herself and other current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor

Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY PERIOD.

57. PLAINTIFF seeks to recover civil penalties through a representative action permitted by PAGA.

58. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above which include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, subdivision (a), 226.7, 510, 512, 551, 552, 1174, subdivision (d), 1194, 1194.2, 1197, and 1198.

59. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically provided which include, but are not limited to, the following:

a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the amount of one hundred dollars ($100.00) for the initial violation and two hundred dollars ($200.00) per employee for violations in subsequent pay periods for violations of Labor Code Section 204;

b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the amount of two hundred and fifty dollars ($250.00) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars ($1,000.00) per aggrieved employee for violations in subsequent pay periods for violations of Labor Code Section 226, subdivision (a);

c. Under Labor Code Section 558, subdivision (a), "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a Section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission," including Labor Code Sections 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars ($50.00) for initial violations for each employee for each pay period for which the employee was underpaid and one hundred dollars ($100.00) for each subsequent violation for each employee for each pay period for which the employee was underpaid;

d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars ($250.00) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether or not the initial violation was intentionally committed; and

e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174, subdivision (d), DEFENDANTS are subject to a civil penalty of five hundred dollars ($500.00).

60. PLAINTIFF further seeks civil penalties based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699, subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties apply: one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation.

61. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699, subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7, 551, 552, 1194, 1197, and 1198, and 2802.

62. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law including under Labor Code Section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees, prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

1. For civil penalties according to proof and all penalties authorized under the PAGA including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, subdivisions (a) and (f);
2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision providing for prejudgment interest;
3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor Code Section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees and costs; and
4. For such further and additional relief as allowed by law or which the Court deems just and proper.

DATED: May 26, 2021

Respectfully submitted,

PROXY LAW FIRM LLP

Hengameh S. Safaei
Rana Nader
Attorneys for Plaintiff SILVIA OSUNA on behalf of herself and all other aggrieved employees

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable to a jury.

DATED: May 26, 2021

Respectfully submitted,

PROXY LAW FIRM LLP

Hengameh S. Safaei
Rana Nader
Attorneys for Plaintiff SILVIA OSUNA on behalf of herself and all other aggrieved employees

EXHIBIT 1

P|L
PROXY LAW FIRM

Hengameh S. Safaei, Esq.
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Telephone: 310-853-8333
Facsimile: 310-861-5931

February 1, 2021

VIA CERTIFIED MAIL

Michael Emmett Pernecky
Agent for Service of Process for M. Pernecky Management Corp.
2826 E. Foothill Blvd., Suite 101
Pasadena, CA 91107

Michael Emmett Pernecky
President and Chief Executive Officer
M. Pernecky Management Corp.
2826 E. Foothill Blvd., Suite 101
Pasadena, CA 91107

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafilings@dir.ca.gov

Re: Silvia Osuna

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Silvia Osuna ("Ms. Osuna") in connection with claims arising from her employment with M. Pernecky Management Corp., a California corporation, Michael Emmett Pernecky, and any other employer(s) or person(s) acting on behalf of M. Pernecky Management Corp., pursuant to Labor Code Sections 558, subdivision (a), and 558.1 (collectively, "Employer"). Employer operates under the name of McDonald's in Pasadena, California. Ms. Osuna is an "aggrieved employee" as defined by Labor Code Section 2699 *et seq.* due to Employer's violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code Section 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

Ms. Osuna is a full-time line cook at Employer's McDonald's fast-food restaurant located at 2861 E. Foothill Blvd., in Pasadena, California. Ms. Osuna is a current hourly, non-exempt employee of Employer. Ms. Osuna has been employed by Employer beginning in or about November 2016. Her main job duties are to prepare meals in the kitchen; however, she is often assigned additional duties outside of the kitchen. Ms. Osuna performs a variety of duties including but not limited to working as a cashier, taking food orders from customers at the drive through, serving and presenting food to customers, presenting orders to delivery drivers, and cleaning the restaurant. Pursuant to the California Private Attorneys' General Act ("PAGA"), Ms. Osuna seeks to represent and recover civil penalties on behalf of herself and other non-exempt "aggrieved employees" who were subject to the Labor Code violations alleged herein. For purposes of this Notice, "aggrieved employees" includes all of Employer's current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order(s), including Industrial Welfare Commission Wage Order No. 5-2001 ("IWC Wage Order No. 5).

Meal Period Violations

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 thirty 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. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, 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 employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*, no later than the start of the employee's sixth hour of work). When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work, i.e., no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Ms. Osuna and all other aggrieved employees all required timely, duty-free 30-minute meal periods. *See* LABOR CODE §§ 226.7 and 512; Wage Order No. 5. Ms. Osuna and other aggrieved employees regularly worked periods of more than five hours without being provided a timely, complete, and duty-free meal period of at least 30 minutes at the required intervals including before the end of each employees' fifth hour of work. The nature of the work performed by Ms. Osuna and all other aggrieved employees did not prevent them from being relieved of all duties during meal periods and Employer apparently did not have any policy or practice pertaining to meal period violations.

On information and belief, Employer has in place internal policies, practices, and procedures aimed at increasing revenue and lowering labor costs while at the same time demanding a limited number of employees to complete customer transactions and food preparations within unreasonably short amounts of time. As a result, Ms. Osuna and other aggrieved employees have been repeatedly denied timely, complete, and duty-free meal breaks because, on information and belief, it is Employer's practice to prioritize revenue over compliance with Labor Code Section 226.7. Ms. Osuna and other aggrieved employees did not receive lawful meal periods because Employer required employees to work through their meal periods and/or caused them to not be able to take all meal periods at the required intervals by failing to provide coverage for meal periods. Despite its violations, Employer did not pay an additional hour of premium pay to Ms. Osuna and all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code § 226.7. As a result, Ms. Osuna and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.")

As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay all aggrieved employees all wages owed at the time of their separations from employment.

<u>Rest Period Violations</u>

Wage Order No. 5, § 12 and Labor Code §§ 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. On information and belief, Employer did not authorize and permit Ms. Osuna and all other aggrieved employees to take all paid and duty-free rest periods to which they are legally entitled. On information and belief, Employer has in place internal policies, practices, and procedures which are aimed at reducing labor costs while demanding a limited number of employees to complete customer transactions and food preparations within unreasonably short amounts of time. As a result, Ms. Osuna and other aggrieved employees have been repeatedly denied timely, complete, and duty-free rest breaks because, on information and belief, it is Employer's practice to prioritize revenue over compliance with Labor Code Section 226.7. Ms. Osuna and other aggrieved employees did not receive lawful meal periods because Employer required employees to work through their rest periods and/or caused them to not be able to take all rest periods at the required intervals by failing to provide coverage for rest periods.

Despite its violations, Employer did not pay an additional hour of premium to all aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code § 226.7. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided."). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Ms. Osuna and all other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer's failure to pay rest period premium wages, Employer failed to timely pay all aggrieved employees all wages owed at the time of their separations from employment.

Overtime Wage Violations

All persons employed in the public housekeeping industry are entitled to overtime pay as set forth in IWC Wage Order No. 5, § 3 which provides the following overtime schedule for employers who are 18 years of age or over. Wage Order 5 § 3 states employees: "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) 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 (1 1/2) 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; and

(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". *See also*, LABOR CODE § 510.

Employer failed to pay Ms. Osuna and all other aggrieved employees overtime pay in accordance with Wage Order No. 5, § 3. Ms. Osuna and other aggrieved employees regularly worked more than forty (40) hours per workweek without being compensated for the overtime hours worked during that workweek. Employer also failed to pay Ms. Osuna and all other aggrieved employees double overtime in accordance with Wage Order No. 5, § 3.

As a result of Employer's unlawful policies and/or practices, Ms. Osuna and all other aggrieved employees were deprived of all required overtime wages including double overtime. As a further result of Employer's failure to pay all overtime wages, Employer failed to timely pay Ms. Osuna and all other aggrieved employees all wages owed at the time of their separations from employment.

Failure to Reimburse Necessary Business Expenses

California Labor Code Section 2802 subdivision (a) requires an employer to indemnify an employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties. The applicable Wage Order further provides, "when uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. California Industrial Welfare Commission Order No. 5-2001 § 9A.

During the relevant time period, Ms. Osuna and other aggrieved employees incurred necessary business expenses and costs that were not reimbursed by Employer. These expenses and costs include costs incurred for the cleaning and maintenance of uniforms. Employer requires Ms. Osuna and all other aggrieved employees to wear a McDonald's work uniform. Employer does not have a policy or practice in place for the cleaning and maintenance of work uniforms. As a result, Ms. Osuna and other aggrieved employees have been required to spend uncompensated time washing, ironing, and maintaining their work uniform throughout their employment.

Employer had the obligation to reimburse Ms. Osuna and other aggrieved employees for costs incurred for the cleaning and maintenance of work uniforms and because of its failure to do so, Employer is subject to penalties, interest, and attorneys' fees. LABOR CODE § 2802 (b)-(d).

Minimum Wage Violations

California law requires employers to compensate employees for all hours worked. Employer was required to pay all aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* LABOR CODE §§ 1182.12, 1194, 1194.2, 1197; Wage Order No. 5, § 4. On information and belief, as a result of Employer's unlawful practices and failure to pay employees for time spent maintaining their mandatory work uniforms, Ms. Osuna and all other aggrieved employees were deprived of all required minimum wages. As a further result of Employer's failure to pay all minimum wages, Employer failed to timely pay Ms. Osuna and all other aggrieved employees all wages owed at the time of their separations from employment.

Wage Statement Violations

Employer was required to furnish Ms. Osuna and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee, (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 employee 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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, (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. LABOR CODE § 226(a); *see also*, LABOR CODE § 1174, subd. (d).

Ss a result of Employer's unlawful policies and practices and its failure to pay all overtime wages, all minimum wages, and all meal premium and rest premium pay, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Osuna and other aggrieved employees in violation Labor Code § 226. Employer's failure to comply with its wage statement obligations was knowing and intentional and Ms. Osuna and other aggrieved employees have suffered injury as a result.

Suitable Seating Violations

Wage Order No. 5, § 14 (A) states that "all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Additionally, Wage Order No. 5 § 14 (B) states that "when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties." Additionally, Labor Code Section 1198 also provides that "the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." *See* LABOR CODE § 1198.

California Code of Regulations, Title 8, Section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." California Code of Regulations, Title 8, Section 11050(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

Employer fails to provide Ms. Osuna and other aggrieved employees suitable seating when the nature of these employees' work reasonably permits seating. Employer also fails to provide an adequate number of suitable seats in reasonable proximity to work areas so that Ms. Osuna and other aggrieved employees are unable to sit when doing so does not interfere with the performance of their duties. As a result, Employer has violated California Labor Code Section 1198 and Wage Order 5-2001, Section 14 by failing to provide suitable seats.

<u>Failure to Maintain Accurate Records</u>

Despite its record-keeping obligations, Employer failed to maintain accurate records on behalf of Ms. Osuna and all other aggrieved employees. LABOR CODE § 1174.

<u>Waiting Time Penalties</u>

Labor Code Sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. On information and belief, Employer failed to timely pay aggrieved employees all of their final wages at the time of their separation, which final pay was to include, but did not include, all overtime and minimum wages and meal and rest period premiums. Employer's failure to pay all final wages due was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days.

As an "aggrieved employee" Ms. Osuna intends to initiate a civil action on behalf of herself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Osuna and all other aggrieved employees all overtime compensation;
2. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. Osuna and all other aggrieved employees the statutory minimum wage for all hours worked;

3. Labor Code §§ 226.7, 512, and 558 by failing to provide Ms. Osuna and all other aggrieved employees with lawful, complete, timely, and duty-free meal first 30-minute meal period;
4. Labor Code §§ 226.7, 516, and 558 by failing to provide all aggrieved employees with all lawful, timely, complete, duty-free rest periods;
5. Labor Code §§ 226 *et seq*., by failing to furnish Ms. Osuna and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
6. Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Osuna and all other aggrieved employees upon their separation of employment;
7. Labor Code § 204 by failing to pay Ms. Osuna and all other aggrieved employees all wages earned at least twice during each calendar month;
8. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Osuna and all other aggrieved employees;
9. Labor Code § 2802 by failing to reimburse Ms. Osuna and other aggrieved employees for necessary business-related expenses; and
10. Labor Code § 1198 for failure to provide suitable seating for Ms. Osuna and all other aggrieved employees.

Pursuant to Labor Code Section 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Ms. Osuna’s grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
PROXY LAW FIRM LLP

Rana Nader, Esq.

cc: Michael Emmett Pernecky, Chief Executive Officer and Agent for Service of Process for M. Pernecky Management Corp. (via certified mail)