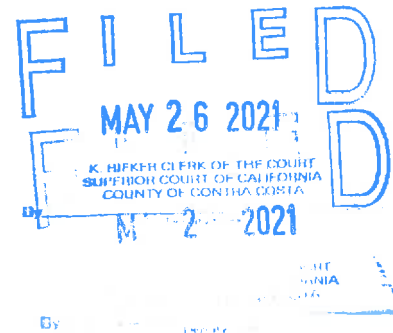


1 Mark A. Ozzello (SBN 116595)
Mark.Ozzello@capstonelawyers.com
2 Brandon K. Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
3 Joseph Hakakian (SBN 323011)
Joseph.Hakakian@capstonelawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiff Jaime Molina Mejia



8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF CONTRA COSTA
11

12 JAIME MOLINA MEJIA, individually, and
13 on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 vs.

16 BLACKHAWK COUNTRY CLUB, a
17 California corporation; and DOES 1
through 10, inclusive,

18 Defendants.
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Case No.: MSC21-00571

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 5(A) (Failure to

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

Jury Trial Demanded

1 Plaintiff Jaime Molina Mejia, individually and on behalf of all other members of the
2 public similarly situated, alleges as follows:

3 JURISDICTION AND VENUE

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

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

within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendant BLACKHAWK COUNTRY CLUB filed Statement of Information forms with the California Secretary of State designating a principal place of business in Danville, County of Contra Costa, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

4. Plaintiff Jaime Molina Mejia is a resident of Concord, in Contra Costa County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Banquet Server and Food Runner from approximately July 2019 to March 24, 2020. Plaintiff worked for Defendants at their country club and restaurant in Danville, California. During his employment, Plaintiff typically worked eight (8) hours or more per day and four (4) or more days per week. Plaintiff's primary job duties included, without limitation, serving food in the dining room and for events.

5. BLACKHAWK COUNTRY CLUB was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of BLACKHAWK COUNTRY CLUB at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, BLACKHAWK
2 COUNTRY CLUB and/or DOES 1 through 10 (collectively, “Defendants” or
3 “BLACKHAWK”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
4 working in concert with, each of the other co-Defendants and was acting within the course and
5 scope of such agency, employment, joint venture, or concerted activity with legal authority to
6 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
7 represent, the official policy of Defendants.

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

12 10. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **GENERAL ALLEGATIONS**

16 11. Defendants are a country club, offering recreational activities such as golf,
17 tennis, and swimming, and rent out event spaces on their property. Upon information and
18 belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their
19 company headquarters in Danville, California, which is responsible for recruiting and hiring
20 of new employees, and communicating and implementing Defendants’ company-wide
21 policies, including timekeeping policies and meal and rest period policies, to employees
22 throughout California.

23 12. In particular, Plaintiff and class members, on information and belief, received
24 the same standardized documents and/or written policies. Upon information and belief, the
25 usage of standardized documents and/or written policies, including new-hire documents,
26 indicate that Defendants dictated policies at the corporate level and implemented them
27 company-wide, regardless of their employees’ assigned locations or positions. Upon
28 information and belief, Defendants set forth uniform policies and procedures in several

documents provided at an employee's time of hire.

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

14. Defendants continue to employ non-exempt or hourly paid employees in California.

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

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

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

18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to be paid at a regular rate of pay, and corresponding overtime rate of pay, that included as eligible income all remuneration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum

1 wages for compensation and that they were not receiving at least minimum wages for work
2 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
3 and class members were not paid at least minimum wages for work done off-the-clock.

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

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

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

25 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that they had a duty to maintain accurate and complete payroll records in
27 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
28 and intentionally failed to do so.

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

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

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

18 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive full
20 reimbursement for all business-related expenses and costs they incurred during the course and
21 scope of their employment and that they did not receive full reimbursement of applicable
22 business-related expenses and costs incurred.

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

28 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be

1 accompanied by a filing fee of seventy-five dollars (\$75).

- 2 (c) The LWDA shall notify the employer and the aggrieved employee or
3 representative by certified mail that it does not intend to investigate the
4 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
5 the postmark date of the aggrieved employee's notice. Upon receipt of
6 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
7 (65) calendar days of the postmark date of the aggrieved employee's
8 notice, the aggrieved employee may commence a civil action pursuant
9 to California Labor Code section 2699 to recover civil penalties.

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

- 14 (a) The aggrieved employee or representative shall give written notice by
15 online filing with the LWDA and by certified mail to the employer of
16 the specific provisions of the California Labor Code alleged to have
17 been violated (other than those listed in Section 2699.5), including the
18 facts and theories to support the alleged violation.
- 19 (b) An aggrieved employee's notice filed with the LWDA pursuant to
20 2699.3(c) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).
- 22 (c) The employer may cure the alleged violation within thirty-three (33)
23 calendar days of the postmark date of the notice sent by the aggrieved
24 employee or representative. The employer shall give written notice
25 within that period of time by certified mail to the aggrieved employee or
26 representative and by online filing with the LWDA if the alleged
27 violation is cured, including a description of actions taken, and no civil
28 action pursuant to Section 2699 may commence. If the alleged violation

1 is not cured within the 33-day period, the aggrieved employee may
2 commence a civil action pursuant to Section 2699.

3 35. On March 19, 2021, Plaintiff provided written notice by online filing to the
4 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
5 Code alleged to have been violated, including facts and theories to support the alleged
6 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
7 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
8 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
9 Plaintiff PAGA Case Number LWDA-CM-826458-21. A true and correct copy of Plaintiff's
10 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

14 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
15 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
16 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
17 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

27 39. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'

rights by violating various sections of the California Labor Code as set forth above.

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

48. There are common questions of law and fact as to class members that

predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to properly calculate the “regular rate” of pay on which Plaintiff’s and class members’ overtime rate of pay was based;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay to Plaintiff and class members during their employment;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day’s work, without properly compensating

1 them as required by California Code of Regulations, Title 8, section
2 11100, subsection 5;

- 3 (k) Whether Defendants failed to reimburse Plaintiff and class members for
4 necessary and required business-related expenditures and/or losses
5 incurred by them in the scope of their employment;
- 6 (l) Whether Defendants failed to provide written notice of information
7 material to Plaintiff's and class members' employment with Defendants;
- 8 (m) Whether Defendants engaged in unlawful and unfair business practices
9 in violation of California Business & Professions Code sections 17200,
10 *et seq.*; and
- 11 (n) The appropriate amount of damages, restitution, or monetary penalties
12 resulting from Defendants' violations of California law.

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

- 15 (a) Numerosity: The class members are so numerous that joinder of all
16 members would be unfeasible and impractical. The membership of the
17 entire class is unknown to Plaintiff at this time; however, the class is
18 estimated to be greater than one hundred (100) individuals and the
19 identity of such membership is readily ascertainable by inspection of
20 Defendants' employment records.
- 21 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each class member with whom he has a well-
23 defined community of interest, and Plaintiff's claims (or defenses, if
24 any) are typical of all class members as demonstrated herein.
- 25 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
26 protect the interests of each class member with whom he has a well-
27 defined community of interest and typicality of claims, as demonstrated
28 herein. Plaintiff acknowledges that he has an obligation to make known

1 to the Court any relationship, conflicts or differences with any class
2 member. Plaintiff's attorneys, the proposed class counsel, are versed in
3 the rules governing class action discovery, certification, and settlement.
4 Plaintiff has incurred, and throughout the duration of this action, will
5 continue to incur costs and attorneys' fees that have been, are, and will
6 be necessarily expended for the prosecution of this action for the
7 substantial benefit of each class member.

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

14 (e) Public Policy Considerations: Employers in the State of California
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees are fearful of bringing actions because
18 they believe their former employers might damage their future
19 endeavors through negative references and/or other means. Class
20 actions provide the class members who are not named in the complaint
21 with a type of anonymity that allows for the vindication of their rights
22 while simultaneously protecting their privacy.

23 **FIRST CAUSE OF ACTION**

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

25 **(Against all Defendants)**

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

28 51. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable wage order. California Labor Code
2 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
3 be the . . . standard conditions of labor for employees. The employment of any employee . . .
4 under conditions of labor prohibited by the order is unlawful.”

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

9 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
10 were required to pay Plaintiff and class members working more than eight (8) hours in a day
11 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
12 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
13 workweek.

14 54. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including nondiscretionary bonuses and incentive pay.

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

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

1 hours in a week, because all hours worked were not recorded.

2 57. During the relevant period, Defendants had a company-wide policy and/or
3 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
4 system to the nearest quarter (0.25) of an hour. Defendants' rounding policy resulted in the
5 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
6 and class members to not be paid overtime wages for all of the overtime hours they actually
7 worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
8 underpayment of wages to Plaintiff and class members. To the extent Defendants' rounding
9 policy has taken away time worked that was eligible for overtime, Plaintiff and class members
10 were denied overtime pay for all hours worked.

11 58. Additionally, during the relevant time period, Defendants had, and continue to
12 have, a uniform practice and/or policy of understaffing their locations which resulted in a lack
13 of adequate meal period coverage, because there were too few employees on duty to handle
14 the heavy workload and attend to customers and club members. On information and belief,
15 Defendants also had a practice of failing to adhere to a schedule of meal periods, which
16 further caused Plaintiff and class members to not be relieved of their duties for compliant
17 meal periods. As a result of this lack of meal period coverage, Plaintiff and class members
18 were not always afforded 30-minute meal periods during shifts when they were entitled to
19 receive a meal period. For example, Defendants sometimes instructed Plaintiff to work
20 through all or parts of his meal periods by continuing to serve food and wait on tables.
21 Moreover, Defendants also had a company-wide policy and/or practice of requiring Plaintiff
22 and class members to respond to calls and text messages on their personal cellular phones at
23 all times during their shifts, including during their unpaid meal periods. Thus, Plaintiff and
24 class members had their meal periods interrupted and/or had to forgo their meal periods
25 altogether, in order to handle their workloads.

26 59. Furthermore, on information and belief, because Defendants frowned upon
27 employees accruing meal period penalties, Defendants would adjust employee time records to
28 reflect compliant meal periods, regardless of whether they had received a compliant meal

1 period, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus,
2 Plaintiff and class members performed work during meal periods and received no
3 compensation for this time.

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

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

20 62. Defendants' failure to pay Plaintiff and class members the balance of overtime
21 compensation as required by California law, violates the provisions of California Labor Code
22 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
23 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
24 and attorneys' fees.

25 **SECOND CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 27 **Minimum Wages** 28 **(Against all Defendants)**

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

3 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
4 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
5 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
6 fixed is unlawful. Compensable work time is defined in Wage Order No. 10 as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11100(2)(H) (defining “Hours Worked”).

10 65. As stated above, Defendants had a company-wide policy and/or practice of
11 rounding Plaintiff’s and class members’ hourly clock-in and clock-out times in their
12 timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for
13 all hours worked. Additionally, as stated, due to Defendants’ company-wide practice of
14 understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods,
15 requirement that employees respond to their cellular phones at all times, and subsequent lack
16 of meal period coverage, Plaintiff and class members were impeded from taking all
17 uninterrupted meal periods to which they were entitled and were required to work off-the-
18 clock. Moreover, as stated, in order to prevent employees from accruing meal period
19 penalties, upon information and belief, Defendants’ management adjusted employees’ time
20 records to reflect compliant meal periods, but required them to continue working. Thus,
21 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
22 during unpaid meal periods because these hours were not always correctly recorded.

23 66. Defendants did not pay minimum wages for all hours worked by Plaintiff and
24 class members. To the extent that these off-the-clock hours did not qualify for overtime
25 premium payment, Defendants did not pay at least minimum wages for those hours worked
26 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198.

28 67. Defendants’ failure to pay Plaintiff and class members minimum wages violates

1 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
2 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 **THIRD CAUSE OF ACTION**

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

6 **Violations**

7 **(Against all Defendants)**

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

10 69. At all relevant times herein set forth, California Labor Code section 512(a)
11 provides that an employer may not require, cause, or permit an employee to work for a period
12 of more than five (5) hours per day without providing the employee with a meal period of not
13 less than thirty (30) minutes, except that if the total work period per day of the employee is
14 not more than six (6) hours, the meal period may be waived by mutual consent of both the
15 employer and the employee. Under California law, first meal periods must start after no more
16 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
17 2012).

18 70. At all relevant times herein set forth, California Labor Code sections 226.7,
19 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
20 meal period mandated by an applicable order of the IWC.

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

27 72. As stated above, upon information and belief, Defendants had, and continue to
28 have, a company-wide policy and/or practice of understaffing their locations, which,

1 combined with heavy workloads and/or failure to adhere to a schedule of meal periods,
2 resulted in a lack of meal period coverage and prevented Plaintiff and class members from
3 taking all timely, uninterrupted meal periods to which they were entitled. Consequently,
4 Plaintiff and class members suffered missed, late, and/or interrupted meal periods.
5 Additionally, as described above, Defendants' requirement that employees respond to their
6 cellular phones at all times prevented Plaintiff and class members from taking compliant meal
7 periods. As also stated, on information and belief, Defendants' management would adjust
8 employees' time records to reflect compliant meal periods, regardless of whether they had
9 received a compliant meal period or not, in order to strictly limit meal penalties that would
10 need to be paid by Defendants.

11 73. As a result, Plaintiff and class members would be forced to work in excess of
12 five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
13 forgo their meal periods altogether. For example, Plaintiff would be unable to take his meal
14 period before the fifth hour of work and instead would continue performing tasks, due to a
15 lack of coverage and heavy workload, and would have his meal periods interrupted and cut
16 short by calls or text messages from Defendants' management regarding the status of events
17 or of progress made on tasks.

18 74. Additionally, Defendants did not provide Plaintiff and class members with
19 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
20 day. During his employment, Plaintiff was not always given a second meal period even
21 though he worked shifts of ten (10) hours or more. Plaintiff and class members did not sign
22 valid meal period waivers on days that they were entitled to meal periods and were not
23 relieved of all duties.

24 75. At all times herein mentioned, Defendants knew or should have known that as a
25 result of their company-wide policies and/or practices, Plaintiff and class members were not
26 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
27 knew or should have known that Defendants did not pay Plaintiff and class members meal
28 period premiums when meal periods were missed, late, short, and/or interrupted.

1 76. Moreover, Defendants engaged in a company-wide practice and/or policy of
2 not paying all meal period premiums owed when compliant meal periods are not provided.
3 Because of Defendants’ practices and/or policies, Plaintiff and class members have not
4 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
5 extent that Defendants did pay Plaintiff and class members premium pay for missed, late, and
6 interrupted meal periods, Defendants did not pay Plaintiff and class members at the correct
7 rate of pay for premiums because Defendants systematically failed to include all forms of
8 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
9 compensation, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff
10 and class members compliant meal periods in violation of California Labor Code sections
11 226.7, 512, and 516 and failed to pay the full meal period premiums due.

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

16 **FOURTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 18 **(Against all Defendants)**

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

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

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

1 (3½) hours.

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

13 82. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
15 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
16 practices, including understaffing and assignment of heavy workloads, prevented Plaintiff and
17 class members from being relieved of all duty to take their rest periods. Moreover, as stated,
18 Defendants also had a company-wide policy and/or practice of requiring employees to respond
19 to calls and text messages from their supervisors at all times during their shifts, including
20 during rest periods. Additionally, on information and belief, Defendants failed to schedule
21 rest periods at all, which, coupled with Defendants’ failure to provide adequate rest period
22 coverage, further led to Plaintiff and class members not being authorized and permitted to take
23 compliant rest periods.

24 83. Furthermore, on information and belief, Defendants maintained a company-
25 wide on-premises rest period policy, which mandated that Plaintiff and class members remain
26 on Defendants’ premises during their rest periods. Because Plaintiff and class members were
27 restricted from leaving the premises during rest periods, they were denied the ability to use
28 their rest periods freely for their own purposes, such as running personal errands. Thus,

Defendants effectively maintained control over Plaintiff and class members during rest periods.

84. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff missed his rest periods due to his workload, Defendants' failure to schedule rest periods, and a lack of rest period coverage. Plaintiff would also have his rest periods interrupted by phone calls and text messages from Defendants' management requesting updates on work-related tasks.

85. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7, 516, and the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

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

87. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

7 89. At all relevant times, Defendants have knowingly and intentionally provided
8 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
9 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
10 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
11 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
12 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
13 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

14 90. Because Defendants did not record the time Plaintiff and Subclass members
15 spent working off the clock, improperly rounded Plaintiff's and Subclass members' total hours
16 worked, and deducted time from their records for meal periods that were interrupted and/or
17 missed (and therefore time for which they should have been paid), Defendants did not list the
18 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in
19 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
20 accurately list the total number of hours worked by Plaintiff and Subclass members in
21 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
22 during the pay period and corresponding accurate number of work hours worked at each
23 hourly rate in violation of section 226(a)(9).

24 91. Also, because Defendants did not calculate Plaintiff's and Subclass members'
25 regular rate of pay correctly for purposes of paying overtime, Defendants did not list the
26 correct amount of gross wages earned by Plaintiff and Subclass members in compliance with
27 section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net
28 wages earned by Plaintiff and Subclass members in violation of section 226(a)(5). Defendants

1 also failed to correctly list all applicable hourly rates in effect during the pay period, namely,
2 correct overtime rates of pay and correct rates of pay for premium wages, in violation of
3 section 226(a)(9).

4 92. The wage statement deficiencies also include, without limitation, failing to list
5 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
6 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
7 only the last four digits of his or her social security number or an employee identification
8 number other than a social security number; failing to list the name and address of the legal
9 entity that is the employer; failing to list the inclusive dates of the period for which employees
10 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
11 worked off-the-clock.

12 93. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period and meal period. During the relevant time
19 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
20 and meal period start and stop times for Plaintiff and Subclass members, in violation of
21 section 1198.

22 94. California Labor Code section 1174(d) provides that “[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),

1 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
2 members showing the daily hours they worked and the wages paid thereto as a result of failing
3 to record the off-the-clock hours that they worked and improperly rounding Plaintiff's and
4 Subclass members' total hours worked. Furthermore, in light of Defendants' failure to
5 provide Plaintiff and Subclass members with second 30-minute meal periods to which they
6 were entitled, Defendants kept no records of meal start and end times for second meal periods.

7 95. Plaintiff and Subclass members are entitled to recover from Defendants the
8 greater of their actual damages caused by Defendants' failure to comply with California Labor
9 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
10 employee.

11 **SIXTH CAUSE OF ACTION**

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

13 **Upon Termination**

14 **(Against all Defendants)**

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

17 97. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
18 that if an employer discharges an employee, the wages earned and unpaid at the time of
19 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
20 her employment, his or her wages shall become due and payable not later than seventy-two
21 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the
23 time of quitting.

24 98. On information and belief, Defendants had a company-wide practice or policy
25 of paying departing employees their final wages on the next regular pay cycle, instead of
26 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
27 Defendants terminated Plaintiff on or about March 24 or 25, 2020 over the phone. However,
28 Defendants did not tender Plaintiff's final pay until at least one week later, on or after April 1,

2020. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of Labor Code section 201.

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

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

SEVENTH CAUSE OF ACTION

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

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

102. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and those class members by Defendants during their employment.

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

104. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
4 month.

5 105. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
10 seven (7) calendar days following the close of the payroll period.

11 106. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 class members all wages due including, but not limited to, overtime wages, minimum wages,
13 meal and rest period premiums, and/or reporting time pay, within the time periods specified
14 by California Labor Code section 204.

15 107. Defendants' failure to pay Plaintiff and class members all wages due violates
16 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
17 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

18 **EIGHTH CAUSE OF ACTION**

19 **Violation of California Labor Code § 1198 and California Code of Regulations Title 8,** 20 **Section 11100 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 21 **(Against all Defendants)**

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

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

1 unlawful.”

2 110. The applicable IWC wage order, California Code of Regulations, Title 8,
3 section 11100(5)(A), provides that “[e]ach workday an employee is required to report for
4 work and does report, but is not put to work or is furnished less than half said employee’s
5 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
6 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
7 employee’s regular rate of pay, which shall not be less than the minimum wage.”

8 111. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11100(5)(A), because
10 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
11 work for their scheduled shift but were put to work for less than half of the regularly
12 scheduled day’s work.

13 112. Defendants had a company-wide practice of sending Plaintiff and class
14 members home early from their shifts, including before they had worked at least half of their
15 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
16 For example, on several occasions, Plaintiff reported to work for his scheduled shift, but was
17 sent home by Defendants’ management immediately because events had been cancelled or
18 when the restaurant was slow. Although Plaintiff and class members would report to work
19 based on the schedule that Defendants provided to them, Defendants would send them home
20 before they had worked at least half of their scheduled shifts without giving them reporting
21 time pay.

22 113. Accordingly, Plaintiff and class members were not properly compensated with
23 reporting time pay in violation of California Labor Code section 1198.

24 **NINTH CAUSE OF ACTION**

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

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

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

116. During the relevant time period, Defendants, on a company-wide basis, expected Plaintiff and class members to report to work in clean uniforms, including, but not limited to, button-up dress shirts; dress slacks; ties; and/or aprons, while simultaneously failing to provide employees with an adequate number of those uniforms in relation to their scheduled shifts. For example, Plaintiff would be scheduled for four (4) or more days of work, but Defendants only provided him two (2) uniform aprons emblazoned with the Defendants’ logo. This forced Plaintiff and class members to dry-clean or launder their uniforms frequently and incur expenses for doing so. Due to the nature of their work, Plaintiff’s and class members’ uniforms would become greasy, stained, and/or acquire an unpleasant odor, and Plaintiff and class members were required to wash their uniform items more frequently than they would otherwise do laundry and/or wash their uniforms separately from any other items, or send them out for dry-cleaning, thus incurring additional utility and laundry expenses.

117. Additionally, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. As stated, Plaintiff and class members were required to use their personal cellular phones to

1 fulfill their work-related responsibilities, such as responding to Defendants’ management and
2 providing status updates on events or assigned tasks. Although Defendants required Plaintiff
3 and class members to utilize their personal cellular phones to carry out their work-related
4 responsibilities, Defendants failed to reimburse them for this cost.

5 118. Defendants could have provided Plaintiff and class members with the actual
6 tools for use on the job, such as company phones, and an adequate number of uniforms or
7 access to laundering services, or, Defendants could have reimbursed employees for the costs
8 of their cellular phone usage and uniform laundering expenses. Instead, Defendants passed
9 these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did
10 not earn at least two (2) times the minimum wage.

11 119. Defendants’ company-wide policy and/or practice of passing on their operating
12 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
13 have intentionally and willfully failed to reimburse Plaintiff and other class members for
14 necessary business-related expenses and costs.

15 120. Plaintiff and class members are entitled to recover from Defendants their
16 business-related expenses incurred during the course and scope of their employment, plus
17 interest.

18 **TENTH CAUSE OF ACTION**

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

20 **(Against all Defendants)**

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

23 122. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
25 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
26 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.
27 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
28 civil penalties for violations of those Labor Code sections not found in section 2699.5,

1 including sections 516, 1182.12, and 2810.5.

2 123. Defendants' conduct, as alleged herein, violates numerous sections of the
3 California Labor Code, including, but not limited to, the following:

- 4 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
5 wage order for Defendants' failure to compensate Plaintiff and other
6 aggrieved employees with all required overtime pay and failure to
7 properly calculate the overtime rates paid to Plaintiff and other
8 aggrieved employees, as alleged herein;
- 9 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
10 and the applicable IWC wage order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;
- 13 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
14 applicable IWC wage order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein;
- 16 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
17 IWC wage order for Defendants' failure to authorize and permit
18 Plaintiff and other aggrieved employees to take rest periods, as alleged
19 herein;
- 20 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
21 wage order for failure to provide accurate and complete wage statements
22 to Plaintiff and other aggrieved employees, as alleged herein;
- 23 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
24 IWC wage order for failure to maintain payroll records as alleged
25 herein;
- 26 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
27 earned wages upon termination, as alleged herein;
- 28 (h) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as alleged herein;

- (i) Violation of Labor Code section 1198 and the applicable IWC wage order for failing to pay reporting time pay, as alleged herein;
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendants, as set forth below.

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

125. During the relevant time period, Defendants failed to provide Plaintiff and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 **ELEVENTH CAUSE OF ACTION**

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

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

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

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

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

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

21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Order, and paying Plaintiff and class
25 members overtime at a lower rate than required by law by failing to
26 properly calculate the regular rate of pay for purposes of overtime, as
27 alleged herein;

28 (b) Failing to pay at least minimum wage to Plaintiff and class members in

- 1 violation of California Labor Code sections 1182.12, 1194, 1197,
2 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 3 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
4 members in violation of California Labor Code sections 226.7, 512(a),
5 516, 1198, and the applicable IWC Order, as alleged herein;
- 6 (d) Failing to authorize and permit Plaintiff and class members to take
7 uninterrupted rest periods in violation of California Labor Code sections
8 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 9 (e) Failing to provide Plaintiff and class members with accurate wage
10 statements and failing to maintain accurate payroll records in violation
11 of California Labor Code sections 226(a), 1174(d), 1198, and the
12 applicable IWC Order, as alleged herein;
- 13 (f) Failing timely to pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code section 204 and the applicable IWC
15 Order, as alleged herein;
- 16 (g) Failing to pay reporting time pay in violation of California Labor Code
17 section 1198 and the applicable Industrial Welfare Commission Order,
18 as alleged herein;
- 19 (h) Failing to reimburse Plaintiff and class members for all business
20 expenses necessarily incurred in violation of California Labor Code
21 sections 2802, as alleged herein; and
- 22 (i) Failing to provide written notice of information material to Plaintiff's
23 and class members' employment with Defendants in violation of Labor
24 Code section 2810.5(a)(1)(A)-(C), as set forth below.

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

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

8 132. At all relevant times, on information and belief, Defendants failed, on a
9 company-wide basis, to provide written notice to Plaintiff and class members that lists the
10 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). For example,
11 Defendants failed to provide Plaintiff and class members with the regular payday designated
12 by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that
13 Defendants provided to Plaintiff is blank where the aforementioned wage information should
14 be filled in. Defendants' failure to provide Plaintiff and class members with written notice of
15 basic information regarding their employment with Defendants is in violation of Labor Code
16 section 2810.5.

17 133. As a result of the violations of California law herein described, Defendants
18 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
19 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
20 herein.

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

27 **TWELVTH CAUSE OF ACTION**

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

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1 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
2 benefits implemented by section 226.7 withheld and retained by Defendants during a period
3 that commences four years prior to the filing of this complaint; a permanent injunction
4 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
5 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
6 Procedure section 1021.5 and other applicable laws; and an award of costs.

7 **REQUEST FOR JURY TRIAL**

8 Plaintiff requests a trial by jury.

9 **PRAYER FOR RELIEF**

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

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

15 **Class Certification**

- 16 2. That this case be certified as a class action;
17 3. That Plaintiff be appointed as the representative of the Class and Subclass;
18 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

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

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

7 11. For general unpaid wages and such general and special damages as may be
8 appropriate;

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

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

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

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

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

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

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

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

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

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

28 21. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

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

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

1 34. For attorneys' fees and costs pursuant to California Labor Code section
2 226(e)(1); and

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

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

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

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

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

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

16 40. For attorneys' fees pursuant to California Code of Civil Procedure section
17 1021.5, or as otherwise provided by law; and

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

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

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

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

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

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

3 46. For attorneys' fees pursuant to California Code of Civil Procedure section
4 1021.5, or as otherwise provided by law; and

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

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

8 48. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(5)(A) by
10 failing to provide Plaintiff and class members with reporting time pay;

11 49. For all actual, consequential and incidental losses and damages, according to
12 proof;

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

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

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

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

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

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

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

27 56. For attorneys' fees and costs pursuant to California Labor Code section
28 2802(c), or as otherwise provided by law; and

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

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

4 58. That the Court declare, adjudge and decree that Defendants violated the
5 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
6 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
7 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
8 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
9 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
10 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
11 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
12 employment); 2802 (by failing to reimburse business expenses); 1198 and California Code of
13 Regulations Title 8, Section 11100 Subdivision 5(A) (by failing to pay reporting time pay);
14 and 2810.5 (by failing to provide written notice of information material to employment);

15 59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
16 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
17 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
18 1197.1, 1198, 2802, and 2810.5;

19 60. For attorneys' fees and costs pursuant to California Labor Code section
20 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
21 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
22 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

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

27 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
28 to provide Plaintiff and class members all overtime wages due to them, failing to provide

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

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

12 65. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violations of California Business & Professions Code sections
15 17200, *et seq.*;

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

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

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

21 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
23 an unfair business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

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

28 70. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections
3 17200, *et seq.*;

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

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

7 73. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: May 26, 2021

Respectfully submitted,

Capstone Law APC

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13 By: 

14 Mark A. Ozzello
15 Brandon K. Brouillette
16 Joseph Hakakian

17 Attorneys for Plaintiff Jaime Molina Mejia
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EXHIBIT 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 19, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Jaime Molina Mejia v. Blackhawk Country Club*

Dear PAGA Administrator:

This office represents Jaime Molina Mejia in connection with his claims under the California Labor Code. Mr. Molina Mejia was an employee of BLACKHAWK COUNTRY CLUB ("BCC").

The employer may be contacted directly at the address below:

BLACKHAWK COUNTRY CLUB
599 BLACKHAWK CLUB DRIVE
DANVILLE CA 94521

Mr. Molina Mejia intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Molina Mejia seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BCC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BCC employed Mr. Molina Mejia as an hourly paid, non-exempt employee from approximately July 2019 to March 24, 2020. Mr. Molina Mejia worked for BCC as a Banquet Server and Food Runner at BCC's country club and restaurant located in Danville, California. During his employment, Mr. Molina Mejia typically worked eight (8) or more hours per day and four (4) or more days per week. At the time his employment ended, Mr. Molina Mejia was compensated approximately \$13.00 per hour. His job duties included, without limitation, serving food in the dining room and for events.

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

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

BLACKHAWK COUNTRY CLUB is a California corporation that owns and operates a private club offering recreational activities, such as golf, tennis, and swimming; dining venues; and meeting and banquet facilities. Upon information and belief, BCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Danville, California, for all non-exempt, hourly paid employees working for BCC in California, including Mr. Molina Mejia and other aggrieved employees. At all relevant times, BCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Molina Mejia and other aggrieved employees, regardless of its location or position.

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

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

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

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

¹ These facts, theories, and claims are based on Mr. Molina Mejia’s experience and counsel’s review of those records currently available relating to Mr. Molina Mejia’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Molina Mejia reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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

During the relevant period, BCC had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. BCC's rounding policy resulted in the failure to compensate Mr. Molina Mejia and other aggrieved employees fully for all hours worked, causing Mr. Molina Mejia and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. BCC's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Molina Mejia and other aggrieved employees. To the extent BCC's rounding policy has taken away time worked that was eligible for overtime, Mr. Molina Mejia and other aggrieved employees were denied overtime pay for all hours worked.

Additionally, during the relevant time period, BCC had, and continues to have, a uniform practice and/or policy of understaffing its locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload and attend to customers and club members. On information and belief, BCC also had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Molina Mejia and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Molina Mejia and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, BCC sometimes instructed Mr. Molina Mejia to work through all or parts of his meal periods by continuing to serve food and wait on tables. Moreover, BCC also had a company-wide policy and/or practice of requiring Mr. Molina Mejia and other aggrieved employees to respond to calls and text messages on their personal cellular phones at all times during their shifts, including during their unpaid meal periods. Thus, Mr. Molina Mejia and other aggrieved employees had their meal periods interrupted and/or had to forgo their meal periods altogether, in order to handle their workloads.

Further, on information and belief, because BCC frowned upon employees accruing meal period penalties, BCC would adjust employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that BCC would otherwise owe. Thus, Mr. Molina Mejia and other aggrieved employees performed work during meal periods and received no compensation for this time.

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

Furthermore, BCC did not pay Mr. Molina Mejia and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BCC paid Mr. Molina Mejia and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BCC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Molina Mejia and other aggrieved employees

worked overtime and received these other forms of pay, BCC failed to pay all overtime wages by paying a lower overtime rate than required.

BCC's failure to pay Mr. Molina Mejia and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Molina Mejia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 10 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining "Hours Worked").

As set forth above, BCC had a company-wide policy and/or practice of rounding Mr. Molina Mejia's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked. Additionally, as stated, due to BCC's company-wide practice of understaffing, assignment of heavy workloads, failure to adhere to a schedule of meal periods, requirement that employees respond to their cellular phones at all times, and subsequent lack of meal period coverage, Mr. Molina Mejia and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, BCC's management adjusted employees' time records to reflect compliant meal periods, but required them to continue working. Thus, BCC systematically failed to pay Mr. Molina Mejia and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, BCC did not pay at minimum wages for all hours worked by Mr. Molina Mejia and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BCC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BCC regularly failed to pay at least minimum wages to Mr. Molina Mejia and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Molina Mejia and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to

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

As stated above, upon information and belief, BCC had, and continues to have, a company-wide policy and/or practice of understaffing its locations, which, combined with the assignment of heavy workloads and/or failure to adhere to a schedule of meal periods, resulted in a lack of meal period coverage and prevented Mr. Molina Mejia and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Molina Mejia and other aggrieved employees suffered missed, late, and/or interrupted meal periods. Additionally, as described above, BCC's requirement that employees respond to their cellular phones at all times prevented Mr. Molina Mejia and other aggrieved employees from taking compliant meal periods. As also stated, on information and belief, BCC's management would adjust employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by BCC.

As a result of BCC's practices and/or policies, Mr. Molina Mejia and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Mr. Molina Mejia would be unable to take his meal period before the fifth hour of work and instead would continue performing tasks, due to a lack of coverage and heavy workload, and would have his meal periods interrupted and cut short by calls or text messages from BCC's management regarding the status of events or of progress made on tasks.

In addition, during the relevant time period, BCC did not provide Mr. Molina Mejia and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Molina Mejia would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Mr. Molina Mejia and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

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

During the relevant time period, BCC regularly failed to authorize and permit Mr. Molina Mejia and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BCC's policies and/or practices, including understaffing and assignment of heavy workloads, prevented Mr. Molina Mejia and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Moreover, as stated, BCC also had a company-wide policy and/or practice of requiring employees to respond to calls and text messages from their supervisors at all times during their shifts, including during rest periods. Additionally, on information and belief, BCC failed to schedule rest periods at all, which, coupled with BCC's failure to provide adequate rest period coverage, further led to Mr. Molina Mejia and other aggrieved employees not being authorized and permitted to take rest periods.

Additionally, on information and belief, during the relevant time period, BCC maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Molina Mejia and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Molina Mejia and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely for their own purposes, such as running personal errands. Thus, BCC effectively maintained control over Mr. Molina Mejia and other aggrieved employees during rest periods.

As a result of BCC's practices and policies, Mr. Molina Mejia and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Molina Mejia missed his rest periods due to his workload, BCC's failure to schedule rest periods, and

a lack of rest period coverage. Mr. Molina Mejia would also have his rest periods interrupted by phone calls and text messages from BCC's management requesting updates on work-related tasks.

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

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

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. BCC has not provided Mr. Molina Mejia and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

Because BCC did not record the time Mr. Molina Mejia and other aggrieved employees spent working off-the-clock, improperly rounded Mr. Molina Mejia's and other aggrieved employees' total hours worked, and deducted time from their records for meal periods that were missed (and therefore time for which they should have been paid), BCC did not list the correct amount of gross wages and net wages earned by Mr. Molina Mejia and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BCC failed to accurately list the total number of hours worked by Mr. Molina Mejia and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period

and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because BCC did not calculate Mr. Molina Mejia's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, BCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BCC also failed to list the correct amount of net wages in violation of section 226(a)(5). BCC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premiums, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BCC willfully failed to maintain accurate payroll records for Mr. Molina Mejia and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Molina Mejia's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BCC failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Molina Mejia and other aggrieved employees, in violation of section 1198. Furthermore, in light of BCC's failure to provide Mr. Molina Mejia and other aggrieved employees with second 30-minute meal periods to which they were entitled, BCC kept no records of meal start and end times for second meal periods.

Because BCC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Molina Mejia and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Molina Mejia and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to

determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

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

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

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, BCC had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, BCC terminated Mr. Molina Mejia on or about March 24 or 25, 2020 over the phone. However, BCC did not tender Mr. Molina Mejia's final pay until at least one week later, on or after April 1, 2020. Thus, BCC failed to pay Mr. Molina Mejia his final wages immediately, in violation of Labor Code section 201.

Additionally, BCC willfully failed to pay Mr. Molina Mejia and other aggrieved employees who are no longer employed by BCC all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of

discharge, or within seventy-two (72) hours of their leaving BCC's employ in violation of California Labor Code sections 201, 202, and 203.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11100(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

BCC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(5), because BCC failed to pay Mr. Molina Mejia and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. BCC had a company-wide practice of sending Mr. Molina Mejia and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Molina Mejia and other aggrieved employees for half of their scheduled shift. For example, on several occasions, Mr. Molina Mejia reported to work for his scheduled shift, but was sent home by BCC's management immediately because events had been cancelled or when the restaurant was slow. Although Mr. Molina Mejia and other aggrieved employees reported to work based on the schedule that BCC provided to them, BCC would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Molina Mejia and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 10-2001, provides that: "[w]hen tools or

equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, BCC, on a company-wide basis, expected Mr. Molina Mejia and other aggrieved employees to report to work in clean and presentable uniforms, including, but not limited to, button-up dress shirts; dress slacks; ties; and/or aprons, while simultaneously failing to provide employees with an adequate number of those uniforms. For example, Mr. Molina Mejia would be scheduled for four (4) or more days of work per week, but BCC only provided him two (2) uniform aprons emblazoned with BCC’s logo. This forced Mr. Molina Mejia and other aggrieved employees to dry-clean or launder their uniforms frequently and incur expenses for doing so. Due to the nature of their work, Mr. Molina Mejia’s and other aggrieved employees’ uniforms would become greasy, stained, and/or acquire an unpleasant odor, and Mr. Molina Mejia and other aggrieved employees were required to wash their uniforms more frequently than they would otherwise do laundry and/or wash their uniforms separately from any other items, or send them out for dry-cleaning, thus incurring additional utility and laundry expenses.

Additionally, BCC had a company-wide policy of requiring Mr. Molina Mejia and other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. As stated, Mr. Molina Mejia and other aggrieved employees were required to use their personal cellular phones to fulfill their work-related responsibilities, such as responding to BCC’s management and providing status updates on events or assigned tasks. Although BCC required Mr. Molina Mejia and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, BCC failed to reimburse them for this cost.

BCC could have provided Mr. Molina Mejia and other aggrieved employees with the necessary equipment for use on the job, such as company phones, and an adequate number of uniforms and/or access to laundering services, or, BCC could have reimbursed employees for the costs of their cellular phone usage and uniform laundering expenses. Instead, BCC passed these operating costs off onto Mr. Molina Mejia and other aggrieved employees. At all relevant times, Mr. Molina Mejia did not earn at least two (2) times the minimum wage.

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

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

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the

employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

BCC failed to provide Mr. Molina Mejia and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). For example, BCC failed to provide Mr. Molina Mejia and other aggrieved employees with the regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that BCC provided to Mr. Molina Mejia is blank where the aforementioned wage information should be filled in. BCC's failure to provide Mr. Molina Mejia and other aggrieved employees with written notice of basic information regarding their employment with BCC is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." BCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Molina Mejia's and other aggrieved employees' rights by violating various sections of the California Labor Code.

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

Therefore, on behalf of all aggrieved employees, Mr. Molina Mejia seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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

Best Regards,

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

Mao Shiokura

Copy: BLACKHAWK COUNTRY CLUB (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

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

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

On May 26, 2021, I served the document(s) described as:

FIRST AMENDED COMPLAINT

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof []
to interested parties as follows [or] [✓] as stated on the attached service list:

DANIEL H. QUALLS

Daniel.Qualls@lewisbrisbois.com

VINCENT FISHER

Vincet.Fisher@lewisbrisbois.com

WILLIAM ANDERSON

William.Anderson@lewisbrisbois.com

SHARICE VALENZUELA

Sharice.Valenzuela@lewisbrisbois.com

LEWIS BRISBOIS

333 Bush Street, Suite 1100

San Francisco, CA 94104

Telephone: (415) 262-8597

Facsimile: (415) 434-0882

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

[] **BY ELECTRONIC FILE & SERVE:** Pursuant to Court Order, I hereby certify that I
caused a true and correct copy of the document(s) listed above to be served
electronically on counsel of record via transmission to File & ServeXpress

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
California, by e-mail delivery on the parties listed herein at their most recent known
e-mail address or e-mail of record in this action.

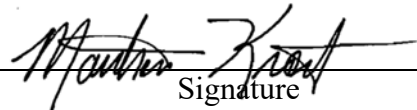
[] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
collection and processing correspondence for overnight delivery. Under that
practice, overnight packages are enclosed in a sealed envelope with a packing slip
attached thereto fully prepaid. The packages are picked up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

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

Executed this May 26, 2021, at Los Angeles, California.

Matthew Krout

Type or Print Name


Signature