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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF CONTRA COSTA
13

14 GILBERTO RIZO, JOSE RIZO, and
15 ANTONIO ROMERO, individually, and on
16 behalf of other members of the general
17 public similarly situated,

17 Plaintiffs,

18 vs.

19 SCOTT'S JACK LONDON SEAFOOD,
20 INC., a California corporation; SCOTT'S
21 SEAFOOD GRILL & BAR (WALNUT
22 CREEK), INC., a California corporation;
23 FOOD SPECIALISTS, INC., a California
24 corporation; VALET HOSPITALITY
25 SERVICES - JACK LONDON SQUARE,
26 LLC, a California limited liability
27 company; and DOES 1 through 10,
28 inclusive,

Defendants.

Case No.: C21-00492

**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

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- Employment);
- (8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day of Rest in Seven);
 - (9) Violation of Labor Code § 1198 and California Code of Regulations Title 8, § 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
 - (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (11) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (13) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Gilberto Rizo, Jose Rizo, and Antonio Romero, individually and on behalf of
2 all other members of the public similarly situated, as aggrieved employees and on behalf of all
3 other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

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

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

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants SCOTT'S JACK LONDON
5 SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD
6 SPECIALISTS, INC.; and VALET HOSPITALITY SERVICES - JACK LONDON
7 SQUARE, LLC filed Statement of Information forms with the California Secretary of State
8 designating a principal place of business in Walnut Creek, County of Contra Costa, in
9 accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5.
10 Venue is also proper in this Court because Defendants employ persons in this county, and thus
11 a substantial portion of the transactions and occurrences related to this action occurred in this
12 county.

13 THE PARTIES

14 4. Plaintiff Gilberto Rizo ("G. Rizo") is a resident of Oakland, in Alameda
15 County, California. Defendants employed Plaintiff G. Rizo as an hourly paid, non-exempt
16 Busser and Waiter from approximately April 1997 to March 14, 2020. Plaintiff G. Rizo
17 worked for Defendants at their restaurant located at #2 Broadway, Oakland, California 94607.
18 During his employment, Plaintiff G. Rizo typically worked six (6) hours to eight (8) hours or
19 more per day and five (5) days per week. Plaintiff G. Rizo's primary job duties included,
20 without limitation, waiting on tables, tending bar, performing side work, and preparing the
21 restaurant for dinner service.

22 5. Plaintiff Jose Rizo ("J. Rizo") is a resident of Oakland, in Alameda County,
23 California. Defendants employed Plaintiff J. Rizo as an hourly paid, non-exempt Busser and
24 Waiter from approximately May 1998 to March 16, 2020. Plaintiff J. Rizo worked for
25 Defendants at their restaurant located at #2 Broadway, Oakland, California 94607. During his
26 employment, Plaintiff J. Rizo typically worked six (6) hours to eight (8) hours or more per day
27 and five (5) days per week. Plaintiff J. Rizo's primary job duties included, without limitation,
28 waiting on tables, performing side work, and preparing the restaurant for dinner service.

1 6. Plaintiff Antonio Romero is a resident of Oakland, in Alameda County,
2 California. Defendants employed Plaintiff Romero as an hourly paid, non-exempt Busser and
3 Waiter from approximately March 1997 to March 15, 2020. Plaintiff Romero worked for
4 Defendants at their restaurant located at #2 Broadway, Oakland, California 94607. During his
5 employment, Plaintiff Romero typically worked six (6) hours to eight (8) hours or more per
6 day and five (5) days per week. Plaintiff Romero's primary job duties included, without
7 limitation, waiting on tables, performing side work, and preparing the restaurant for dinner
8 service.

9 7. SCOTT'S JACK LONDON SEAFOOD, INC. was and is, upon information
10 and belief, a California corporation, and at all times hereinafter mentioned, an employer
11 whose employees are engaged throughout this county and the State of California.

12 8. SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC. was and is,
13 upon information and belief, a California corporation, and at all times hereinafter mentioned,
14 an employer whose employees are engaged throughout this county and the State of California.

15 9. FOOD SPECIALISTS, INC. was and is, upon information and belief, a
16 California corporation, and at all times hereinafter mentioned, an employer whose employees
17 are engaged throughout this county and the State of California.

18 10. VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC, was
19 and is, upon information and belief, a California limited liability company, and at all times
20 hereinafter mentioned, an employer whose employees are engaged throughout this county and
21 the State of California.

22 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
23 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
24 amend the complaint and serve such fictitiously named Defendants once their names and
25 capacities become known.

26 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
27 were the partners, agents, owners, or managers of SCOTT'S JACK LONDON SEAFOOD,
28 INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD

1 SPECIALISTS, INC.; and/or VALET HOSPITALITY SERVICES - JACK LONDON
2 SQUARE, LLC, at all relevant times.

3 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, SCOTT'S JACK
5 LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK),
6 INC.; FOOD SPECIALISTS, INC.; VALET HOSPITALITY SERVICES - JACK LONDON
7 SQUARE, LLC; and/or DOES 1 through 10 (collectively, "Defendants" or "SCOTT'S"), each
8 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
9 each of the other co-Defendants and was acting within the course and scope of such agency,
10 employment, joint venture, or concerted activity with legal authority to act on the others'
11 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
12 policy of Defendants.

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

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

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

1 to Plaintiffs and class members under the law.

2 17. Plaintiffs are informed and believe, and thereon alleges, that at all relevant
3 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
4 and class members because Defendants have:

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

20 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
21 there has existed a unity of interest and ownership between Defendants such that any
22 individuality and separateness between the entities has ceased.

23 19. SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL
24 & BAR (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; VALET HOSPITALITY
25 SERVICES - JACK LONDON SQUARE, LLC; and DOES 1 through 10 are therefore alter
26 egos of each other.

27 20. Adherence to the fiction of the separate existence of Defendants would permit
28 an abuse of the corporate privilege, and would promote injustice by protecting Defendants

1 from liability for the wrongful acts committed by them under the name SCOTT'S.

2 21. Plaintiffs further allege, upon information and belief, that Defendants
3 SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR
4 (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; and VALET HOSPITALITY
5 SERVICES - JACK LONDON SQUARE, LLC are alter egos of each other for the following
6 reasons:

7 (a) On the California Secretary of State's website
8 (<https://businesssearch.sos.ca.gov/>), SCOTT'S JACK LONDON
9 SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT
10 CREEK), INC.; FOOD SPECIALISTS, INC.; and VALET
11 HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC share
12 the same entity and entity mailing address, "2770 CAMINO DIABLO
13 #B, WALNUT CREEK CA 94597;"

14 (b) On information and belief, SCOTT'S JACK LONDON SEAFOOD,
15 INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK),
16 INC.; and FOOD SPECIALISTS, INC. share the same Chief Executive
17 Officer, Chief Financial Officer, and director, "RAYMOND
18 GALLAGHER," who also serves as a member of VALET
19 HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC;

20 (c) On information and belief, SCOTT'S JACK LONDON SEAFOOD,
21 INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK),
22 INC.; and FOOD SPECIALISTS, INC. share the same Secretary,
23 "CONNIE PARAMO;"

24 (d) On information and belief, SCOTT'S JACK LONDON SEAFOOD,
25 INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK),
26 INC.; FOOD SPECIALISTS, INC.; and VALET HOSPITALITY
27 SERVICES - JACK LONDON SQUARE, LLC share the same agent for
28 service of process, "RAYMOND GALLAGHER;" and

(e) SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; and VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

22. Defendants offer restaurant and banquet services at their two locations in Oakland and Walnut Creek, and serve as the exclusive concessionaire for all private events at the Museums at Blackhawk in Danville. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Walnut Creek, California which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

23. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

24. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Walnut Creek, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs 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

1 employment ends.

2 25. Defendants continue to employ non-exempt or hourly paid employees in
3 California.

4 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
6 and advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

8 27. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
9 members were not paid for all hours worked because all hours worked were not recorded.

10 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and class members were entitled to receive certain wages
12 for overtime compensation and that they were not receiving certain wages for overtime
13 compensation.

14 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and class members were entitled to receive at least
16 minimum wages for compensation and that they were not receiving at least minimum wages
17 for work that was required to be done off-the-clock. In violation of the California Labor
18 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
19 the-clock.

20 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and class members were entitled to meal periods in
22 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
23 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
24 periods and that Plaintiffs and class members were not provided with all meal periods or
25 payment of one (1) additional hour of pay at their regular rates of pay when they did not
26 receive a timely, uninterrupted, thirty (30) minute meal period.

27 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and class members were entitled to rest periods in

1 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
2 additional hour of pay at their regular rates of pay when they were not authorized and
3 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs
4 and class members were not authorized and permitted to take compliant rest periods, nor did
5 Defendants provide Plaintiffs and class members with payment of one (1) additional hour of
6 pay at their regular rates of pay when they were not authorized and permitted to take a
7 compliant rest period.

8 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to receive complete and
10 accurate wage statements in accordance with California law. In violation of the California
11 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
12 statements.

13 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that they had a duty to maintain accurate and complete payroll records in
15 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
16 and intentionally failed to do so.

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

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

1 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to one day's rest in seven.
3 In violation of the California Labor Code, Defendants required Plaintiffs and class members to
4 work more than six consecutive days without a day of rest, where the total hours worked
5 exceeded 30 hours in any week or six hours in any one day thereof.

6 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and class members were entitled to suitable seating and/or
8 were entitled to sit when it did not interfere with the performance of their duties and also have
9 seats nearby to use during a lull in tasks that do require moving about or standing, but
10 willfully, knowingly, and intentionally failed to provide suitable seating.

11 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and class members were entitled to receive all reporting
13 time pay when Defendants required Plaintiffs and class members were required to report to
14 work but were put to work for less than half of their regular scheduled shift. In violation of
15 the California Labor Code, Plaintiffs and class members were not paid all reporting time pay.

16 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and class members were entitled to be paid a split-shift
18 premium when they returned to work for an additional shift in the same day, after having been
19 clocked out for more than an hour.

20 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and class members were entitled to receive full
22 reimbursement for all business-related expenses and costs they incurred during the course and
23 scope of their employment and that they did not receive full reimbursement of applicable
24 business-related expenses and costs incurred.

25 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants knew or should have known that Defendants had a duty to provide
27 Plaintiffs and/or class members with written notice of the material terms of their employment
28 with Defendants as required by the California Wage Theft Prevention Act, but willfully,

1 knowingly, and intentionally failed to do so.

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

8 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

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

1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(a) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).

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

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

16 (a) The aggrieved employee or representative shall give written notice by
17 online filing with the LWDA and by certified mail to the employer of
18 the specific provisions of the California Labor Code alleged to have
19 been violated (other than those listed in Section 2699.5), including the
20 facts and theories to support the alleged violation.

21 (b) An aggrieved employee's notice filed with the LWDA pursuant to
22 2699.3(c) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).

24 (c) The employer may cure the alleged violation within thirty-three (33)
25 calendar days of the postmark date of the notice sent by the aggrieved
26 employee or representative. The employer shall give written notice
27 within that period of time by certified mail to the aggrieved employee or
28 representative and by online filing with the LWDA if the alleged

1 violation is cured, including a description of actions taken, and no civil
2 action pursuant to Section 2699 may commence. If the alleged violation
3 is not cured within the 33-day period, the aggrieved employee may
4 commence a civil action pursuant to Section 2699.

5 48. On March 12, 2021, Plaintiff G. Rizo provided written notice by online filing to
6 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
7 Labor Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff G. Rizo's
9 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
10 The LWDA PAGA Administrator confirmed receipt of Plaintiff G. Rizo's written notice and
11 assigned Plaintiff G. Rizo PAGA Case Number LWDA-CM-825775-21. A true and correct
12 copy of Plaintiff G. Rizo's written notice to the LWDA and Defendants is attached hereto as
13 "Exhibit 1."

14 49. On March 12, 2021, Plaintiff J. Rizo provided written notice by online filing to
15 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
16 Labor Code alleged to have been violated, including facts and theories to support the alleged
17 violations, in accordance with California Labor Code section 2699.3. Plaintiff J. Rizo's
18 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
19 The LWDA PAGA Administrator confirmed receipt of Plaintiff J. Rizo's written notice and
20 assigned Plaintiff J. Rizo PAGA Case Number LWDA-CM-825778-21. A true and correct
21 copy of Plaintiff J. Rizo's written notice to the LWDA and Defendants is attached hereto as
22 "Exhibit 2."

23 50. On March 12, 2021, Plaintiff Romero provided written notice by online filing
24 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
25 Labor Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff Romero's
27 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
28 The LWDA PAGA Administrator confirmed receipt of Plaintiff Romero's written notice and

1 assigned Plaintiff Romero PAGA Case Number LWDA-CM-825780-21. A true and correct
2 copy of Plaintiff Romero's written notice to the LWDA and Defendants is attached hereto as
3 "Exhibit 3."

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

7 52. Thus, Plaintiffs have satisfied the administrative prerequisites under California
8 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
10 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5.

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

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

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

26 56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
28 private attorneys general, seek assessment and collection of civil penalties for themselves, all

1 other aggrieved employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552,
3 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5.

4 **CLASS ACTION ALLEGATIONS**

5 57. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
6 all other persons similarly situated, and thus seek class certification under California Code of
7 Civil Procedure section 382.

8 58. All claims alleged herein arise under California law for which Plaintiffs seek
9 relief authorized by California law.

10 59. Plaintiffs' proposed class consists of and is defined as follows:

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

13 60. Plaintiffs' proposed subclass consists of and is defined as follows:

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

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

18 62. Plaintiffs reserve the right to redefine the Class and Subclass and to add
19 additional subclasses as appropriate based on further investigation, discovery, and specific
20 theories of liability.

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

23 (a) Whether Defendants required Plaintiffs and class members to work over
24 eight (8) hours per day, over twelve (12) hours per day, or over forty
25 (40) hours per week and failed to pay all legally required overtime
26 compensation to Plaintiffs and class members;

27 (b) Whether Defendants failed to pay Plaintiffs and class members at least
28 minimum wages for all hours worked;

- 1 (c) Whether Defendants failed to provide Plaintiffs and class members with
2 meal periods;
- 3 (d) Whether Defendants failed to authorize and permit Plaintiffs and class
4 members to take rest periods;
- 5 (e) Whether Defendants provided Plaintiffs and class members with
6 complete and accurate wage statements as required by California Labor
7 Code section 226(a);
- 8 (f) Whether Defendants maintained accurate payroll records as required by
9 California Labor Code section 1174(d);
- 10 (g) Whether Defendants failed to pay earned overtime wages, minimum
11 wages, meal and rest period premiums, and/or reporting time pay due to
12 Plaintiffs and class members upon their discharge;
- 13 (h) Whether Defendants failed timely to pay overtime wages, minimum
14 wages, meal and rest period premiums, and/or reporting time pay to
15 Plaintiffs and class members during their employment;
- 16 (i) Whether Defendants failed to provide Plaintiffs and class members one
17 day's rest in seven;
- 18 (j) Whether Defendants failed to provide Plaintiffs and class members
19 suitable seating;
- 20 (k) Whether Defendants required Plaintiffs and class members to report to
21 work, but failed to provide them with work or provided them with less
22 than half their scheduled day's work, without properly compensating
23 them as required by California Code of Regulations, Title 8, section
24 11050, subsection 5;
- 25 (l) Whether Defendants required Plaintiffs and class members to return to
26 work for an additional shift in the same day, after having been clocked
27 out for more than an hour, without paying Plaintiffs and class members
28 an addition hour of pay at the minimum wage as required by California

Code of Regulations, Title 8, section 11050(4)(C);

- (m) Whether Defendants failed to reimburse Plaintiffs and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (n) Whether Defendants failed to provide written notice of information material to Plaintiffs' and/or class members' employment with Defendants;
- (o) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (p) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make

1 known to the Court any relationship, conflicts or differences with any
2 class member. Plaintiffs' attorneys, the proposed class counsel, are
3 versed in the rules governing class action discovery, certification, and
4 settlement. Plaintiffs have incurred, and throughout the duration of this
5 action, will continue to incur costs and attorneys' fees that have been,
6 are, and will be necessarily expended for the prosecution of this action
7 for the 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 65. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 66. 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 67. 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 68. Specifically, the applicable IWC Wage Order provides that Defendants are and
10 were required to pay Plaintiffs 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 (1 ½) 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 69. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiffs 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 70. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) 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 71. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs 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 72. First, 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 Plaintiffs and class members fully for all hours worked, causing
6 Plaintiffs and class members to not be paid overtime wages for all of the overtime hours they
7 actually worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
8 underpayment of wages to Plaintiffs and class members. To the extent Defendants' rounding
9 policy has taken away time worked that was eligible for overtime, Plaintiffs and class
10 members were denied overtime pay for all hours worked.

11 73. Second, during the relevant time period, Defendants had a company-wide
12 policy and/or practice of limiting the amount of overtime employees could accrue.
13 Defendants' written policy states: "There will be no unauthorized overtime. . . . Even if you
14 work in two departments[,] you cannot go over 8 hours unless authorized or scheduled. All
15 shift changes must be authorized by a manager and signed off in the shift change book. . . .
16 We use the shift change book to know what the staffing is for that day[;] if we don't know[,] **it**
17 **has not been authorized.**" (Emphasis in original). On information and belief, this limitation
18 on overtime accrual was based on a company-wide policy of staffing locations strictly based
19 on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled
20 with Defendants' understaffing policy and assignment of heavy workloads, led Plaintiffs and
21 class members to work off-the-clock before and after their scheduled shift times in order to
22 complete their assigned tasks, such as helping set up the restaurant and donning and doffing
23 their uniforms. Defendants discouraged and impeded Plaintiffs and class members from
24 recording hours worked that were outside of their scheduled shifts, for incurring unauthorized
25 overtime, and Plaintiffs and class members received no compensation for this time.

26 74. Third, as stated, Defendants had, and continue to have, a uniform practice
27 and/or policy of understaffing their locations which resulted in a lack of adequate meal period
28 coverage, because there were too few employees on duty to handle the heavy workload and

1 attend to customers. On information and belief, Defendants also had a practice of failing to
2 schedule meal periods, which further caused Plaintiffs and class members to not be relieved of
3 their duties for compliant meal periods. As a result of this lack of meal period coverage,
4 Plaintiffs and class members were not always afforded 30-minute meal periods during shifts
5 when they were entitled to receive a meal period. For example, Defendants sometimes
6 instructed Plaintiffs to work through all or parts of their meal periods by continuing to wait on
7 tables. Further, on information and belief, because Defendants frowned upon employees
8 accruing meal period penalties, Defendants would pressure employees to clock out for meal
9 periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they
10 had received a compliant meal period, in order to strictly limit meal penalties that Defendants
11 would otherwise owe. Thus, Plaintiffs and class members performed work during meal
12 periods and received no compensation for this time.

13 75. Defendants knew or should have known that as a result of these company-wide
14 practices and/or policies, Plaintiffs and class members were performing their assigned duties
15 off-the-clock before and after their shifts and during meal periods, and were suffered or
16 permitted to perform work for which they were not paid. Because Plaintiffs and class
17 members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
18 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and
19 class members were not paid overtime wages for all of the overtime hours they actually
20 worked.

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

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

78. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5-2001 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, § 11050(2)(K) (defining “Hours Worked”).

79. As set forth above, Defendants had a company-wide policy and/or practice of rounding Plaintiffs’ and class members’ hourly clock-in and clock-out times in their timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked. Additionally, as stated, due to Defendants’ restrictions on overtime accrual, Defendants systematically failed to record all hours worked, and Plaintiffs and class members were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties.

80. Furthermore, as stated above, on information and belief, due to Defendants’ company-wide practices of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Plaintiffs and class members 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, Defendants’ management pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, but required them to continue working. Thus, Defendants systematically

1 failed to pay Plaintiffs and class members for actual hours worked during unpaid meal periods
2 because these hours were not always correctly recorded.

3 81. Defendants did not pay minimum wages for all hours worked by Plaintiffs and
4 class members. To the extent that these off-the-clock hours did not qualify for overtime
5 premium payment, Defendants did not pay at least minimum wages for those hours worked
6 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
7 1198.

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

12 **THIRD CAUSE OF ACTION**

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

14 **Violations**

15 **(Against all Defendants)**

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

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

26 85. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

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

7 87. As stated above, upon information and belief, Defendants had, and continue to
8 have, a company-wide policy and/or practice of understaffing their locations due to labor
9 budgeting, which, combined with the assignment of heavy workloads and/or failure to
10 schedule meal periods, resulted in a lack of meal period coverage and prevented Plaintiffs and
11 class members from taking all timely, uninterrupted meal periods to which they were entitled.
12 Consequently, Plaintiffs and class members suffered missed, late, and/or interrupted meal
13 periods. As also stated, on information and belief, Defendants' management would pressure
14 employees to clock out for meal periods to reflect compliant meal periods, upon threat of
15 discipline, regardless of whether they had received a compliant meal period or not, in order to
16 strictly limit meal penalties that would need to be paid by Defendants.

17 88. As a result, Plaintiffs and class members would be forced to work in excess of
18 five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
19 forgo their meal periods altogether. For example, Plaintiffs would be required to clock out for
20 their meal periods before the fifth hour and continue performing tasks, due to a lack of
21 coverage and heavy workload.

22 89. Additionally, Defendants did not provide Plaintiffs and class members with
23 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
24 day. During their employment, Plaintiffs were not given a second meal period even though
25 they worked shifts of ten (10) hours or more. Plaintiffs and class members did not sign valid
26 meal period waivers on days that they were entitled to meal periods and were not relieved of
27 all duties.

28 90. Moreover, Defendants had a company-wide policy of requiring all newly hired

employees to sign blanket meal period waivers at or near their time of hire. Defendants took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Defendants' company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Plaintiffs and class members from taking all meal periods to which they were entitled.

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

92. Moreover, Defendants 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 Defendants' practices and/or policies, Plaintiffs and class members have not received premium pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

93. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs 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 the meal period was not provided.

FOURTH CAUSE OF ACTION

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

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

1 95. At all relevant times herein set forth, the applicable IWC Wage Order and
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and class
3 members' employment by Defendants.

4 96. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3 ½) hours.

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

21 98. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
23 hour period worked or major fraction thereof. As with meal periods, Defendants' company-
24 wide practices, including utilization of labor budgets, resultant understaffing, and assignment
25 of heavy workloads, prevented Plaintiffs and class members from being relieved of all duty to
26 take their rest periods. Additionally, on information and belief, Defendants failed to schedule
27 rest periods at all, which, coupled with Defendants' failure to provide adequate rest period
28 coverage, further led to Plaintiffs and class members not being authorized and permitted to

1 take compliant rest periods. As a result of Defendants' practices and policies, Plaintiffs and
2 class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of
3 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
4 entitled.

5 99. Furthermore, upon information and belief, during the relevant time period,
6 Defendants maintained and implemented a company-wide on-premises rest period policy,
7 which mandated that Plaintiffs and class members remain on the work premises during their
8 rest periods. Because Plaintiffs and class members were restricted from leaving the premises
9 during rest periods, they were denied the ability to use their rest periods freely for their own
10 purposes, such as running personal errands. Thus, Defendants effectively maintained control
11 over Plaintiffs and class members during rest periods.

12 100. Defendants have also engaged in a company-wide policy and/or practice of not
13 paying all rest period premiums owed when compliant rest periods are not authorized and
14 permitted. As a result, Defendants denied Plaintiffs and class members rest periods and failed
15 to pay them rest period premiums due, in violation of Labor Code section 226.7, 516, and the
16 applicable IWC Wage Order.

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

22 **FIFTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 24 **Statements and Failure to Maintain Accurate Payroll Records** 25 **(Against all Defendants)**

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

28 103. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and
2 complete itemized wage statement in writing, including, but not limited to, the name and
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total
4 hours worked, and all applicable rates of pay.

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

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

22 106. The wage statement deficiencies also include, without limitation, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
24 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
25 only the last four digits of his or her social security number or an employee identification
26 number other than a social security number; failing to list the name and address of the legal
27 entity that is the employer; failing to list the inclusive dates of the period for which employees
28 were paid; and/or failing to state all hours worked as a result of not recording or stating hours

1 worked off-the-clock.

2 107. California Labor Code section 1198 provides that the maximum hours of work
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
4 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
5 employment of any employees for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
7 Wage Order, employers are required to keep accurate time records showing when the
8 employee begins and ends each work period and meal period. During the relevant time
9 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
10 and meal period start and stop times for Plaintiffs and Subclass members, in violation of
11 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy
12 of falsifying Plaintiffs’ and Subclass members’ time records by recording that compliant meal
13 periods were taken regardless of if or when meal periods were actually taken, and thereby
14 failed to keep accurate records of meal start and end times for Plaintiffs and Subclass
15 members. Furthermore, in light of Defendants’ failure to provide Plaintiffs and Subclass
16 members with second 30-minute meal periods to which they were entitled, Defendants kept no
17 records of meal start and end times for second meal periods.

18 108. California Labor Code section 1174(d) provides that “[e]very person employing
19 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
20 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
21 plants or establishments at which employees are employed, payroll records showing the hours
22 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
23 applicable piece rate paid to, employees employed at the respective plants or
24 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
25 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass
26 members showing the daily hours they worked and the wages paid thereto as a result of failing
27 to record the off-the-clock hours that they worked and improperly rounding Plaintiffs’ and
28 Subclass members’ total hours worked.

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

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination
(Against all Defendants)

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

111. 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 Plaintiffs and those class members no longer employed by Defendants upon their termination.

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

113. Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, 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.

114. Defendants' failure to pay Plaintiffs 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. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

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

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

116. 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 Plaintiffs and class members during their employment.

117. 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.

118. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

119. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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

1 seven (7) calendar days following the close of the payroll period.

2 120. During the relevant time period, Defendants willfully failed to pay Plaintiffs
3 and class members all wages due including, but not limited to, overtime wages, minimum
4 wages, meal and rest period premiums, and/or reporting time pay, within the time periods
5 specified by California Labor Code section 204.

6 121. Defendants' failure to pay Plaintiffs and class members all wages due violates
7 Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from
8 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

9 **EIGHTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's**
11 **Rest in Seven**
12 **(Against all Defendants)**

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

15 123. At all relevant times herein, California Labor Code section 551 provides that
16 every person employed in any occupation of labor is entitled to one day's rest in seven.
17 Additionally, California Labor Code section 552 prohibits employers from requiring
18 employees to work more than six consecutive days without a day of rest.

19 124. At all relevant times herein set forth, California Labor Code section 556
20 exempts an employer from the day-of-rest requirement when the total hours worked by an
21 employee do not exceed 30 hours in any week or six hours in any one day thereof.

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

1 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
2 to any other civil or criminal penalty provided by law.”

3 126. During the relevant time period, Defendants sometimes scheduled Plaintiffs and
4 class members to work six (6) or more hours per day and more than seven (7) consecutive
5 days in a workweek. For example, Plaintiff J. Rizo worked seven (7) consecutive days
6 between December 18, 2019, and December 24, 2019. Because Plaintiffs and class members
7 worked over 30 hours per week and over six (6) hours per day in a workweek, they were not
8 exempt from the day-of-rest requirement. To the extent that Plaintiffs and class members may
9 have signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

10 127. Thus, during the relevant time period, and in violation of Labor Code sections
11 551 and 552, Defendants willfully caused Plaintiffs and class members to work more than six
12 days in seven. Plaintiffs and class members are therefore entitled to recover civil penalties
13 pursuant to Labor Code section 558.

14 **NINTH CAUSE OF ACTION**

15 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 16 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 17 **(Against all Defendants)**

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

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

26 130. The applicable IWC wage order, California Code of Regulations, Title 8,
27 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for
28 work and does report, but is not put to work or is furnished less than half said employee’s

1 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled
2 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
3 employee's regular rate of pay, which shall not be less than the minimum wage."

4 131. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
6 Defendants failed to pay Plaintiffs and class members reporting time pay when they reported
7 to work for their scheduled shift but were put to work for less than half of the regularly
8 scheduled day's work.

9 132. Defendants had a company-wide practice of sending Plaintiffs and class
10 members home early from their shifts, including before they had worked at least half of their
11 regular shift, but would not pay Plaintiffs and class members for half of their scheduled shift.
12 For example, on several occasions, Plaintiffs G. Rizo and J. Rizo would report to work for
13 their scheduled shifts, but were sent home by Defendants' management immediately before
14 clocking in or within the first hour after clocking in because business was slow or portions of
15 the restaurant would be closed due to bad weather. Although Plaintiffs and class members
16 would report to work based on the schedule that Defendants provided to them, Defendants
17 would send them home before they had worked at least half of their scheduled shifts without
18 giving them reporting time pay.

19 133. Accordingly, Plaintiffs and class members were not properly compensated with
20 reporting time pay in violation of California Labor Code section 1198.

21 **TENTH CAUSE OF ACTION**

22 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 23 **(Against all Defendants)**

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

26 135. At all times herein set forth, California Labor Code section 2802 provides that
27 an employer must reimburse employees for all necessary expenditures and losses incurred by
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
4 equipment are required by the employer or are necessary to the performance of a job, such
5 tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage provided herein may be
7 required to provide and maintain hand tools and equipment customarily required by the trade
8 or craft.”

9 136. During the relevant time period, Defendants, on a company-wide basis,
10 expected Plaintiffs and class members to report to work in “clean” and “well-pressed”
11 uniforms, including, but not limited to, uniform collared, long-sleeved white cotton dress
12 shirts; black dress slacks; vests; ties; bowties; and/or jackets, while simultaneously failing to
13 provide employees with an adequate number of those uniforms. On information and belief,
14 this forced Plaintiffs and class members to dry-clean or launder their uniforms frequently and
15 incur expenses for doing so. Due to the nature of their work, Plaintiffs’ and class members’
16 uniforms would become stained and/or acquire an unpleasant odor, and Plaintiffs and class
17 members were required to wash their uniform items more frequently than they would
18 otherwise do laundry and/or wash their uniform shirts separately from any other items, or send
19 them out for dry-cleaning, thus incurring additional utility and laundry expenses.

20 137. Defendants could have provided Plaintiffs and class members with the
21 necessary equipment for use on the job, such as such as an adequate number of uniforms or
22 access to laundering services, or, Defendants could have reimbursed employees for the costs
23 of their uniform laundering expenses. Instead, Defendants passed these operating costs off
24 onto Plaintiffs and class members. At all relevant times, Plaintiffs did not earn at least two (2)
25 times the minimum wage.

26 138. Defendants’ company-wide policy and/or practice of passing on their operating
27 costs to Plaintiffs and class members violates California Labor Code section 2802.
28 Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class

1 members for necessary business-related expenses and costs.

2 139. Plaintiffs and class members are entitled to recover from Defendants their
3 business-related expenses incurred during the course and scope of their employment, plus
4 interest.

5 **ELEVENTH CAUSE OF ACTION**

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

7 **(Against all Defendants)**

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

10 141. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
11 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
12 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
13 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code
14 section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties
15 for violations of those Labor Code sections not found in section 2699.5, including sections
16 516, 1182.12, and 2810.5.

17 142. Defendants’ conduct, as alleged herein, violates numerous sections of the
18 California Labor Code, including, but not limited to, the following:

- 19 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
20 Wage Order for Defendants’ failure to compensate Plaintiffs and other
21 aggrieved employees with all required overtime pay, as alleged herein;
- 22 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
23 and the applicable IWC Wage Order for Defendants’ failure to
24 compensate Plaintiffs and other aggrieved employees with at least
25 minimum wages for all hours worked, as alleged herein;
- 26 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to provide
28 Plaintiffs and other aggrieved employees with meal periods, as alleged

herein;

(d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

(g) Violation of Labor Code section 204 for failure to pay all earned wages during employment to Plaintiffs and other aggrieved employees, as alleged herein;

(h) Violation of Labor Code sections 201, 202, and 203 for failure to pay Plaintiffs and other aggrieved employees all earned wages upon termination, as alleged herein;

(i) Violation of Labor Code section 551 and 552 for failure to provide other aggrieved employees one day's rest in seven, as alleged herein;

(j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to Plaintiffs and other aggrieved employees, as set forth below;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to pay reporting time pay to Plaintiffs and other aggrieved employees, as alleged herein;

(l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to pay split-shift premiums to other aggrieved

employees, as set forth below;

- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (n) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment to other aggrieved employees, as set forth below.

143. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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.”

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

145. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could provide other aggrieved employees with a seat or stool at their host stands, but instead deny employees seating and force other aggrieved employees to stand throughout the day.

146. Other aggrieved employees spent a substantial portion of their day at their host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, as set forth herein, Defendants systematically, and on a company-wide basis, do not provide seats or stools at or near host stands, forcing other aggrieved employees to stand throughout their work shifts.

147. During the relevant time period, Defendants violated California Labor Code

1 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other
2 aggrieved employees were not allowed to sit, even when it would not have interfered with the
3 performance of their duties, nor were they provided with suitable seats. Defendants’
4 management did not inform other aggrieved employees that they were allowed to sit down,
5 provide any means for them to sit down, or mention any policy regarding sitting.

6 148. As a result of Defendants’ company-wide policy and/or practice of prohibiting
7 employees from sitting during their shifts and company-wide failure to provide suitable
8 seating, other aggrieved employees were forced to stand during shifts and denied seats.
9 Defendants’ failure to provide suitable seating to other aggrieved employees violates
10 California Labor Code section 1198 and IWC Wage Order 5-2001, subdivision 14(A). Other
11 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
12 sections 2699(a), (f), and (g).

13 149. At all relevant times herein, California Labor Code section 1198 makes it
14 illegal to employ an employee under conditions of labor that are prohibited by the applicable
15 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
16 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
17 The employment of any employee . . . under conditions of labor prohibited by the order is
18 unlawful.”

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

24 151. During the relevant time period, Defendants violated California Labor Code
25 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
26 Plaintiffs and other aggrieved employees were not provided with suitable seats in reasonable
27 proximity to their work areas and, therefore, effectively not allowed to sit, even during lulls in
28 their work duties.

1 152. As stated, Defendants' California restaurants are generally similar in their
2 layout and design and there was, and continues to be, space near work areas (with reasonable
3 or no modification to these work areas) to allow for the presence and use of a seat or stool by
4 Plaintiffs and other aggrieved employees during lulls in operation. Defendants could have
5 provided Plaintiffs and other aggrieved employees with a seat or stool in their work areas, but
6 instead denied employees seating and forced Plaintiffs and other aggrieved employees to stand
7 throughout the day.

8 153. Defendants did not provide Plaintiffs and other aggrieved employees with seats
9 or stools in reasonable proximity to their work areas to allow them to use seats when it would
10 not interfere with the performance of their duties for times when they were not engaged in
11 active duties that require standing. In other words, to the extent Plaintiffs and other aggrieved
12 employees engaged in duties in which the nature of the work required standing, Defendants
13 denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants
14 did not inform Plaintiffs and other aggrieved employees of their rights to a seat or stool under
15 California law.

16 154. As a result of Defendants' company-wide policy and/or practice of prohibiting
17 employees from sitting at any time, even when they were not engaged in active duties
18 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
19 work areas, Plaintiffs and other aggrieved employees were forced to stand during shifts and
20 denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other aggrieved
21 employees violates California Labor Code section 1198 and IWC Wage Order 5-2001,
22 subdivision 14(B). Plaintiffs and other aggrieved employees are therefore entitled to recover
23 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 155. At all times relevant herein, Labor Code section 1198 provides that no
25 employer may employ an employee under conditions of labor that are prohibited by the
26 applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(4)(C)
27 provides that, "When an employee works a split shift, one (1) hour's pay at the minimum
28 wage shall be paid in addition to the minimum wage for that workday, except when the

1 employee resides at the place of employment.” Other aggrieved employees did not reside at
2 Defendants’ restaurant locations. California Code of Regulations, Title 8, defines a split shift
3 as “a work schedule, which is interrupted by non-paid non-working periods established by the
4 employer, other than bona fide rest or meal periods.”

5 156. Defendants violated California Labor Code section 1198 and California Code
6 of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay other aggrieved
7 employees a split-shift premium when they returned to work for an additional shift in the same
8 day, after having been clocked out for more than an hour. For example, other aggrieved
9 employees were sometimes required to work an earlier lunch shift, and then told to clock out
10 for more than an hour, before returning to work in early evening for the dinner shift. When
11 this occurred, Defendants did not always pay other aggrieved employees an additional hour at
12 minimum wage.

13 157. Accordingly, Defendants required other aggrieved employees to work split
14 shifts but failed to pay them the split-shift premium wage in violation of California Labor
15 Code section 1198. Defendants’ failure to compensate other aggrieved employees with split-
16 shift pay when they returned to work for an additional shift in the same day, after having been
17 clocked out for more than an hour, violates California Labor Code section 1198 and California
18 Code of Regulations Title 8, Section 11050(4)(C). Other aggrieved employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 158. California’s Wage Theft Prevention Act was enacted to ensure that employers
21 provide employees with basic information material to their employment relationship at the
22 time of hiring, and to ensure that employees are given written and timely notice of any
23 changes to basic information material to their employment. Codified at California Labor
24 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
25 employer must provide written notice to employees containing basic and material payroll
26 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
27 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
28 overtime, the regular payday designated by the employer, and any allowances claims as part

1 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
2 (C).

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

9 **TWELFTH CAUSE OF ACTION**

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

11 **Unlawful Business Practices**

12 **(Against all Defendants)**

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

15 161. Defendants are "persons" as defined by California Business & Professions
16 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
17 and/or associations.

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

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

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

- 1 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
2 class members, to work overtime without paying them proper
3 compensation in violation of California Labor Code sections 510 and
4 1198 and the applicable IWC Wage Order, as alleged herein;
- 5 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
6 violation of California Labor Code sections 1182.12, 1194, 1197,
7 1197.1, and 1198 and the applicable IWC Wage Order, as alleged
8 herein;
- 9 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class
10 members in violation of California Labor Code sections 226.7, 512(a),
11 516, 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (d) Failing to authorize and permit Plaintiffs and class members to take
13 uninterrupted rest periods in violation of California Labor Code sections
14 226.7, 516, 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (e) Failing to provide Plaintiffs and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation
18 of California Labor Code sections 226(a), 1174(d), 1198, and the
19 applicable IWC Wage Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiffs and class members in
21 violation of California Labor Code section 204 and the applicable IWC
22 Wage Order, as alleged herein;
- 23 (g) Failing to provide one day's rest in seven to Plaintiffs and class
24 members in violation of California Labor Code sections 551 and 552, as
25 alleged herein;
- 26 (h) Failing to pay reporting time pay in violation of California Labor Code
27 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 28 (i) Failing to pay Plaintiffs and class members a split-shift premium wage

1 of an additional hour of pay at the minimum wage, when they returned
2 to work for an additional shift in the same day, after having been
3 clocked out for more than an hour, in violation of California Labor Code
4 section 1198 and the applicable IWC Wage Order, as set forth below;
5 and

6 (j) Failing to reimburse Plaintiffs and class members for all business
7 expenses necessarily incurred in violation of California Labor Code
8 sections 2802, as alleged herein.

9 165. At all times relevant herein, Labor Code section 1198 provides that no
10 employer may employ an employee under conditions of labor that are prohibited by the
11 applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(4)(C)
12 provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum
13 wage shall be paid in addition to the minimum wage for that workday, except when the
14 employee resides at the place of employment.” Plaintiffs and class members did not reside at
15 Defendants’ locations. California Code of Regulations, Title 8, defines a split shift as “a work
16 schedule, which is interrupted by non-paid non-working periods established by the employer,
17 other than bona fide rest or meal periods.”

18 166. Defendants violated California Labor Code section 1198 and California Code
19 of Regulations, Title 8, section 11050(4)(C), because Defendants have failed to pay Plaintiffs
20 and class members a split-shift premium when they returned to work for an additional shift in
21 the same day, after having been clocked out for more than an hour. For instance, Plaintiffs
22 were sometimes required to work an earlier lunch shift, and then told to clock out for more
23 than an hour, before returning to work in early evening for the dinner shift. Specifically, on
24 December 12, 2019, and December 13, 2019, Plaintiff Romero’s timesheets indicate he
25 worked shifts separated by 110 minutes and 94 minutes, respectively, but he was not paid a
26 split shift premium. Similarly, on December 7, 2019, and December 11, 2019, Plaintiff G.
27 Rizo’s timesheets indicate he worked shifts separated by 108 minutes and 78 minutes,
28 respectively, but he also was not paid a split shift premium. Additionally, on December 17,

1 2018, Plaintiff J. Rizo’s timesheets indicate he worked a shift separated by 161 minutes, but
2 was not paid a split shift premium. Thus, when this occurred, Defendants did not always pay
3 Plaintiffs and class members an additional hour at minimum wage.

4 167. Accordingly, Defendants required Plaintiffs and class members to work split
5 shifts but failed to pay them the split-shift premium wage in violation of California Labor
6 Code section 1198. Defendants’ failure to compensate Plaintiffs and class members with
7 split-shift pay when they returned to work for an additional shift in the same day, after having
8 been clocked out for more than an hour, violates California Labor Code section 1198 and
9 California Code of Regulations Title 8, Section 11050(4)(C).

10 168. As a result of the violations of California law herein described, Defendants
11 unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members
12 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
13 herein.

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

20 **THIRTEENTH CAUSE OF ACTION**

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

22 **Unfair Business Practices**

23 **(Against all Defendants)**

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

26 171. Defendants are “persons” as defined by California Business & Professions
27 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
28 and/or associations.

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

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

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

21 175. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
22 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
23 benefits implemented by section 226.7 withheld and retained by Defendants during a period
24 that commences four years prior to the filing of this complaint; a permanent injunction
25 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
26 Plaintiffs and class members; an award of attorneys’ fees pursuant to California Code of Civil
27 Procedure section 1021.5 and other applicable laws; and an award of costs.

28 ///

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

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

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

9 **Class Certification**

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

11 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

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

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

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

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

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

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

23 9. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
28 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

1 11. For general unpaid wages and such general and special damages as may be
2 appropriate;

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

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

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

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

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

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

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

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

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

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

22 21. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

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

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

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiffs and class members to take all rest periods;

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

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

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

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

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

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

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

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

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

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

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

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

28 36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
2 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
3 the employment of Plaintiffs and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to
5 proof;

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

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

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and
13 appropriate.

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

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

19 43. For all actual, consequential and incidental losses and damages, according to
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code
22 section 210;

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

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 551 and 552 by failing to provide a day's rest in seven; and that Defendants committed said violations of the Labor Code against Plaintiffs and class members;

49. For civil penalties for conduct occurring any time between one year prior to the filing of this complaint and judgment, pursuant to California Labor Code section 558;

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

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

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiffs and class members with reporting time pay;

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

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

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

As to the Tenth Cause of Action

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

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

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

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

1 proof;

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

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

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

7 62. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
9 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
10 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
11 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
12 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
14 wages during employment); 201, 202, and 203 (by failing to timely pay all earned wages upon
15 termination); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the
16 applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable
17 IWC Wage Order (by failing to pay reporting time pay); 1198 and the applicable IWC Wage
18 Order (by failing to pay split-shift premiums); 2802 (by failing to reimburse business
19 expenses); and 2810.5 (by failing to provide notice of material terms of employment).

20 63. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
21 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
22 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12,
23 1194, 1197, 1197.1, 1198, 2802 and 2810.5;

24 64. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
26 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
27 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5;

28 65. For pre-judgment and post-judgment interest as provided by law; and

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

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

4 67. That the Court declare, adjudge and decree that Defendants' conduct of failing
5 to provide Plaintiffs and class members all overtime wages due to them, failing to provide
6 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and
7 class members all meal periods, failing to authorize and permit Plaintiffs and class members to
8 take all rest periods, failing to provide Plaintiffs and class members accurate and complete
9 wage statements, failing to maintain accurate payroll records for Plaintiffs and class members,
10 failing to timely pay Plaintiffs and class members all earned wages during employment,
11 failing to provide one day's rest in seven, failing to pay Plaintiffs and class members reporting
12 time pay, failing to properly compensate Plaintiffs and class members for split shifts, and
13 failing to reimburse Plaintiffs and class members for business-related expenses, constitutes an
14 unlawful business practice in violation of California Business and Professions Code sections
15 17200, *et seq.*;

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

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

22 70. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5; and

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

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

27 72. That the Court declare, adjudge and decree that Defendants' conduct of denying
28 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes

1 an unfair business practice in violation of California Business and Professions Code sections
2 17200, *et seq.*;

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

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

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

12 76. For pre-judgment and post-judgment interest as provided by law; and

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

15
16 Dated: May 18, 2021

Respectfully submitted,

Capstone Law APC

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18
19 By: 

20 Bevin Allen Pike
21 Orlando Villalba
22 Helga Hakimi
23 Roxanna Tabatabaeepour

24 Attorneys for Plaintiffs Gilberto Rizo,
25 Jose Rizo, and Antonio Romero
26
27
28

EXHIBIT “1”



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March 12, 2021

VIA ONLINE SUBMISSION

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

Subject: *Gilberto Rizo v. Scott's Jack London Seafood, Inc., et al.*

Dear PAGA Administrator:

This office represents Gilberto Rizo in connection with his claims under the California Labor Code. Mr. Rizo was an employee of SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; and/or VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC. For the purposes of this letter, Mr. Rizo collectively refers to these entities as "SCOTTS."

The employers may be contacted directly at the addresses below:

SCOTT'S JACK LONDON SEAFOOD, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

SCOTT'S SEAFOOD GRILL & BAR
(WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

Mr. Rizo 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. Rizo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SCOTTS 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.

SCOTTS employed Mr. Rizo as an hourly paid, non-exempt employee from approximately April 1997 to March 14, 2020. Mr. Rizo worked for SCOTTS as a Busser and Waiter at SCOTTS's

restaurant located at #2 Broadway, Oakland, California 94607. During his employment, Mr. Rizo typically worked six (6) to eight (8) hours or more per day, and five (5) days per week. At the time his employment ended, Mr. Rizo was compensated approximately \$14.14 per hour. His job duties included, without limitation, waiting on tables, tending bar, performing side work, and preparing the restaurant for dinner service.

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

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

SCOTT’S JACK LONDON SEAFOOD, INC.; SCOTT’S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; and FOOD SPECIALISTS, INC. are California corporations, while VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC is a California limited liability company. Together, they offer restaurant and banquet services at their two locations in Oakland and Walnut Creek, and serve as the exclusive concessionaire for all private events at the Museums at Blackhawk in Danville. Upon information and belief, SCOTTS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek, California, for all non-exempt, hourly paid employees working for SCOTTS in California, including Mr. Rizo and other aggrieved employees. At all relevant times, SCOTTS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rizo and other aggrieved employees, regardless of its location or position.

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

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

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.

SCOTTS willfully failed to pay all overtime wages owed to Mr. Rizo and other aggrieved employees. During the relevant time period, Mr. Rizo and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SCOTTS 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. SCOTTS's rounding policy resulted in the failure to compensate Mr. Rizo and other aggrieved employees fully for all hours worked, causing Mr. Rizo and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. SCOTTS's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Rizo and other aggrieved employees. To the extent SCOTTS's rounding policy has taken away time worked that was eligible for overtime, Mr. Rizo and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, SCOTTS had a company-wide policy and/or practice of limiting the amount of overtime employees could accrue. SCOTTS's written policy states: "There will be no unauthorized overtime. . . . Even if you work in two departments[,] you cannot go over 8 hours unless authorized or scheduled. All shift changes must be authorized by a manager and signed off in the shift change book. . . . We use the shift change book to know what the staffing is for that day[;] if we don't know[,] **it has not been authorized.**" (Emphasis in original). On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with SCOTTS's understaffing policy and assignment of heavy workloads, led Mr. Rizo and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks, such as helping set up the restaurant and/or donning and doffing their uniforms. SCOTTS discouraged and impeded Mr. Rizo and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, for incurring unauthorized overtime, and Mr. Rizo and other aggrieved employees received no compensation for this time.

Third, as stated, SCOTTS 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. On information and belief, SCOTTS also had a practice of failing to schedule meal periods, which further caused Mr. Rizo 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. Rizo 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, SCOTTS sometimes instructed Mr. Rizo to work through all or parts of his meal periods by continuing to wait on tables. Further, on information and belief, because SCOTTS frowned upon employees accruing meal period penalties, SCOTTS would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period, in order to strictly limit

meal penalties that SCOTTS would otherwise owe. Thus, Mr. Rizo and other aggrieved employees performed work during meal periods and received no compensation for this time.

SCOTTS knew or should have known that as a result of these company-wide policies and/or practices, Mr. Rizo 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. Rizo 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. Rizo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

SCOTTS's failure to pay Mr. Rizo 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. Rizo 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. 5 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, § 11050(2)(K) (defining "Hours Worked").

As set forth above, SCOTTS had a company-wide policy and/or practice of rounding Mr. Rizo'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 SCOTTS's restrictions on overtime accrual, SCOTTS systematically failed to record all hours worked, and Mr. Rizo and other aggrieved employees were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties.

Furthermore, as stated above, on information and belief, due to SCOTTS's company-wide practices of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Mr. Rizo 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, SCOTTS's management pressured employees to clock out for meal

periods to reflect compliant meal periods, upon threat of discipline, but required them to continue working. Thus, SCOTTS systematically failed to pay Mr. Rizo and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SCOTTS did not pay at minimum wages for all hours worked by Mr. Rizo and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SCOTTS 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, SCOTTS regularly failed to pay at least minimum wages to Mr. Rizo 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. Rizo 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, SCOTTS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which, combined with the assignment of heavy workloads and/or failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Mr. Rizo and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Rizo and other aggrieved employees suffered missed, late, and/or interrupted meal periods. As also stated, on information and belief, SCOTTS's management would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, 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 SCOTTS.

As a result of SCOTTS's practices and/or policies, Mr. Rizo 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. Rizo would

be required to clock out for his meal periods before the fifth hour and continue performing tasks, due to a lack of coverage and heavy workload. SCOTTS knew or should have known that as a result of its policies, Mr. Rizo and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SCOTTS further knew or should have known that it did not pay Mr. Rizo and other aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

In addition, during the relevant time period, SCOTTS did not provide Mr. Rizo 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. Rizo would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Mr. Rizo 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.

Moreover, SCOTTS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SCOTTS took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. SCOTTS's company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Rizo and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, SCOTTS 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. Rizo and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rizo 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, SCOTTS regularly failed to authorize and permit Mr. Rizo 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, SCOTTS’s policies and/or practices, including utilization of labor budgets, resultant understaffing, and assignment of heavy workloads, prevented Mr. Rizo and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SCOTTS also failed to schedule rest periods at all, which, coupled with SCOTTS’s failure to provide adequate rest period coverage, further led to Mr. Rizo and other aggrieved employees not being authorized and permitted to take rest periods. As a result of SCOTTS’s practices and policies, Mr. Rizo 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.

Additionally, on information and belief, during the relevant time period, SCOTTS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Rizo and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Rizo 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, SCOTTS effectively maintained control over Mr. Rizo and other aggrieved employees during rest periods.

SCOTTS 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. Rizo and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rizo 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. SCOTTS has not provided Mr. Rizo 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, SCOTTS has knowingly and intentionally provided Mr. Rizo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SCOTTS issued uniform wage statements to Mr. Rizo 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, SCOTTS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SCOTTS did not record the time Mr. Rizo and other aggrieved employees spent working off-the-clock, improperly rounded Mr. Rizo'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), SCOTTS did not list the correct amount of gross wages and net wages earned by Mr. Rizo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SCOTTS failed to accurately list the total number of hours worked by Mr. Rizo 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 SCOTTS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SCOTTS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SCOTTS also failed to list the correct amount of net wages in violation of section 226(a)(5). SCOTTS 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), SCOTTS willfully failed to maintain accurate payroll records for Mr. Rizo 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. Rizo'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, SCOTTS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Rizo and other aggrieved employees, in violation of section 1198. Also, as stated, SCOTTS engaged in a company-wide practice and/or policy of falsifying Rizo's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Rizo and other aggrieved employees. Furthermore, in light of SCOTTS's failure to provide Mr. Rizo and other aggrieved employees with second 30-minute meal periods to which they were entitled, SCOTTS kept no records of meal start and end times for second meal periods.

Because SCOTTS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rizo 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. Rizo 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. Rizo 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, SCOTTS failed to pay Mr. Rizo 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. Rizo 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.

SCOTTS willfully failed to pay Mr. Rizo and other aggrieved employees who are no longer employed by SCOTTS 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 SCOTTS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Rizo 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, SCOTTS required Mr. Rizo and other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Rizo and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Rizo and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SCOTTS caused Mr. Rizo and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Rizo and other aggrieved employees are therefore 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SCOTTS could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, as set forth herein, SCOTTS systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SCOTTS’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Rizo and other aggrieved employees during lulls in operation. SCOTTS could provide Mr. Rizo and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forced Mr. Rizo and other aggrieved employees to stand throughout the day.

SCOTTS did not provide Mr. Rizo and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Rizo and other aggrieved employees engaged in duties in which the nature of the work required standing, SCOTTS denied them the use of seats nearby during lulls in their work duties. Moreover, SCOTTS did not inform Mr. Rizo and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Rizo and other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to Mr. Rizo and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Rizo and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 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 11050(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)

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because SCOTTS failed to pay Mr. Rizo 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. SCOTTS had a company-wide practice of sending Mr. Rizo 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. Rizo and other aggrieved employees for half of their scheduled shift. For example, on several occasions, Mr. Rizo reported to work for his scheduled shift, but was sent home by SCOTTS’s management immediately before clocking in or within the first hour after clocking in because business was slow or portions of the restaurant would be closed due to bad weather. Although Mr. Rizo and other aggrieved employees reported to work based on the schedule that SCOTTS provided to them, SCOTTS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Rizo and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Rizo 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California

Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

SCOTTS willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because SCOTTS failed to pay Mr. Rizo and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, Mr. Rizo was sometimes required to work an earlier lunch shift, and then told to clock out for more than an hour, before returning to work in early evening for the dinner shift. When this occurred, SCOTTS did not always pay Mr. Rizo and other aggrieved employees an additional hour at minimum wage. Accordingly, SCOTTS required Mr. Rizo and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

SCOTTS’s failure to provide Mr. Rizo and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Mr. Rizo 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 5-2001, 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, SCOTTS, on a company-wide basis, expected Mr. Rizo and other aggrieved employees to report to work in “clean” and “well-pressed” uniforms, including, but not limited to, uniform collared, long-sleeved white cotton dress shirts; black dress slacks; vests; ties; bowties; and/or jackets, while simultaneously failing to provide employees with an adequate number of those uniforms. On information and belief, this forced Mr. Rizo 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. Rizo’s and other aggrieved employees’ uniforms would become stained and/or acquire an unpleasant odor, and Mr. Rizo 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.

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

Thus, SCOTTS 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. Rizo 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.

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

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

Accordingly, Mr. Rizo 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rizo, acting in the public interest as a private attorney general, seeks assessment and collection of civil

penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SCOTTS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Rizo 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: SCOTT'S JACK LONDON SEAFOOD, INC. (via U.S. Certified Mail); SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC. (via U.S. Certified Mail); FOOD SPECIALISTS, INC. (via U.S. Certified Mail); VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC (via U.S. Certified Mail)

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WALNUT CREEK CA 94597



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

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Domestic Return Receipt

SCOTT'S JACK LONDON SEAFOOD, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

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Certified Mail Fee

\$ 3.50

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- ☒ Return Receipt (hardcopy) \$ 2.50
- ☐ Return Receipt (electronic) \$
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- ☐ Adult Signature Required \$
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Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

SCOTT'S JACK LONDON SEAFOOD, INC.

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

2770 CAMINO DIABLO #B

City, State, ZIP+4®

WALNUT CREEK CA 94597

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

See Reverse for Instructions

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Rizo v. Scott's
Jack London Seafood
Inc

7020 1290 0001 8879 0107

CERTIFIED MAIL



7020 1290 0001 8879 0114

one
AW APC
Park East, Ste 1000
CA 90067

SCOTT'S SEAFOOD GRILL & BAR
(WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
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1. Article Addressed to:

SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2711 93

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0114

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

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A. Signature

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☐ Agent
☐ Addressee

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C. Date of Delivery

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

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Domestic Return Receipt

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Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.40
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63

Total Postage and Fees
\$ 7.93

Sent To

CREEK), INC.

Street and Apt. No., P.O. Box, or Rural Route

2770 CAMINO DIABLO #B

City, State, ZIP+4®

WALNUT CREEK CA 94597

Postmark
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A:20 v. Scott's
Seafood Grill & Bar
(Walnut Creek),
Inc.

SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.

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

See Reverse for Instructions

7020 1290 0001 8879 0114

CERTIFIED MAIL®



7020 1290 0001 8879 0121

one
AW APC
Park East, Ste 1000
CA 90067

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

7020 1290 0001 8879 0121

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☒ Return Receipt (hardcopy) \$ 2.50
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage
\$ 1.63
Total Postage and Fees
\$ 7.93

Sent To **FOOD SPECIALISTS, INC.**
Street and Apt. No. **2770 CAMINO DIABLO #B**
City, State, ZIP+4® **WALNUT CREEK CA 94597**

Postmark
Riverside, CA
Specialist, Inc.

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1. Article Addressed to:

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2712 30

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0121

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL®



7020 1290 0001 8879 0138

one
LAW APC
Park East, Ste 1000
CA 90067

VALET HOSPITALITY SERVICES - JACK LONDON
SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2712 23

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0138

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

COMPLETE THIS SECTION ON DELIVERY

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- ☐ Agent
- ☐ Addressee

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C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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OFFICIAL USE

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Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage	\$ 6.63
Total Postage and Fees	\$ 7.93

Sent To	VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC
Street and Apt. No., City, State, ZIP+4®	2770 CAMINO DIABLO #B WALNUT CREEK CA 94597

Postmark Here
Rizov, Valet
Hospitality Services
Jack London Square
LLC

EXHIBIT “2”



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

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 12, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jose Rizo v. Scott's Jack London Seafood, Inc., et al.*

Dear PAGA Administrator:

This office represents Jose Rizo in connection with his claims under the California Labor Code. Mr. Rizo was an employee of SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; and/or VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC. For the purposes of this letter, Mr. Rizo collectively refers to these entities as "SCOTTS."

The employers may be contacted directly at the addresses below:

SCOTT'S JACK LONDON SEAFOOD, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

SCOTT'S SEAFOOD GRILL & BAR
(WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

Mr. Rizo 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. Rizo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SCOTTS 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.

SCOTTS employed Mr. Rizo as an hourly paid, non-exempt employee from approximately May 1998 to March 16, 2020. Mr. Rizo worked for SCOTTS as a Busser and Waiter at SCOTTS's

restaurant located at #2 Broadway, Oakland, California 94607. During his employment, Mr. Rizo typically worked six (6) to eight (8) hours or more per day, and five (5) days per week. At the time his employment ended, Mr. Rizo was compensated approximately \$14.14 per hour. His job duties included, without limitation, waiting on tables, performing side work, and preparing the restaurant for dinner service.

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

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

SCOTT’S JACK LONDON SEAFOOD, INC.; SCOTT’S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; and FOOD SPECIALISTS, INC. are California corporations, while VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC is a California limited liability company. Together, they offer restaurant and banquet services at their two locations in Oakland and Walnut Creek, and serve as the exclusive concessionaire for all private events at the Museums at Blackhawk in Danville. Upon information and belief, SCOTTS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek, California, for all non-exempt, hourly paid employees working for SCOTTS in California, including Mr. Rizo and other aggrieved employees. At all relevant times, SCOTTS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rizo and other aggrieved employees, regardless of its location or position.

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

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

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.

SCOTTS willfully failed to pay all overtime wages owed to Mr. Rizo and other aggrieved employees. During the relevant time period, Mr. Rizo and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SCOTTS 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. SCOTTS's rounding policy resulted in the failure to compensate Mr. Rizo and other aggrieved employees fully for all hours worked, causing Mr. Rizo and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. SCOTTS's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Rizo and other aggrieved employees. To the extent SCOTTS's rounding policy has taken away time worked that was eligible for overtime, Mr. Rizo and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, SCOTTS had a company-wide policy and/or practice of limiting the amount of overtime employees could accrue. SCOTTS's written policy states: "There will be no unauthorized overtime. . . . Even if you work in two departments[,] you cannot go over 8 hours unless authorized or scheduled. All shift changes must be authorized by a manager and signed off in the shift change book. . . . We use the shift change book to know what the staffing is for that day[;] if we don't know[,] **it has not been authorized.**" (Emphasis in original). On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with SCOTTS's understaffing policy and assignment of heavy workloads, led Mr. Rizo and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks, such as helping set up the restaurant and donning and doffing their uniforms. SCOTTS discouraged and impeded Mr. Rizo and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, for incurring unauthorized overtime, and Mr. Rizo and other aggrieved employees received no compensation for this time.

Third, as stated, SCOTTS 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. On information and belief, SCOTTS also had a practice of failing to schedule meal periods, which further caused Mr. Rizo 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. Rizo 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, SCOTTS sometimes instructed Mr. Rizo to work through all or parts of his meal periods by continuing to wait on tables. Further, on information and belief, because SCOTTS frowned upon employees accruing meal period penalties, SCOTTS would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period, in order to strictly limit

meal penalties that SCOTTS would otherwise owe. Thus, Mr. Rizo and other aggrieved employees performed work during meal periods and received no compensation for this time.

SCOTTS knew or should have known that as a result of these company-wide policies and/or practices, Mr. Rizo 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. Rizo 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. Rizo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

SCOTTS's failure to pay Mr. Rizo 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. Rizo 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. 5 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, § 11050(2)(K) (defining "Hours Worked").

As set forth above, SCOTTS had a company-wide policy and/or practice of rounding Mr. Rizo'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 SCOTTS's restrictions on overtime accrual, SCOTTS systematically failed to record all hours worked, and Mr. Rizo and other aggrieved employees were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties.

Furthermore, as stated above, on information and belief, due to SCOTTS's company-wide practices of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Mr. Rizo 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, SCOTTS's management pressured employees to clock out for meal

periods to reflect compliant meal periods, upon threat of discipline, but required them to continue working. Thus, SCOTTS systematically failed to pay Mr. Rizo and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SCOTTS did not pay at minimum wages for all hours worked by Mr. Rizo and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SCOTTS 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, SCOTTS regularly failed to pay at least minimum wages to Mr. Rizo 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. Rizo 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, SCOTTS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which, combined with the assignment of heavy workloads and/or failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Mr. Rizo and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Rizo and other aggrieved employees suffered missed, late, and/or interrupted meal periods. As also stated, on information and belief, SCOTTS's management would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, 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 SCOTTS.

As a result of SCOTTS's practices and/or policies, Mr. Rizo 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. Rizo would

be required to clock out for his meal periods before the fifth hour and continue performing tasks, due to a lack of coverage and heavy workload. SCOTTS knew or should have known that as a result of its policies, Mr. Rizo and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SCOTTS further knew or should have known that it did not pay Mr. Rizo and other aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

In addition, during the relevant time period, SCOTTS did not provide Mr. Rizo 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. Rizo would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Mr. Rizo 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.

Moreover, SCOTTS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SCOTTS took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. SCOTTS's company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Rizo and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, SCOTTS 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. Rizo and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rizo 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, SCOTTS regularly failed to authorize and permit Mr. Rizo 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, SCOTTS’s policies and/or practices, including utilization of labor budgets, resultant understaffing, and assignment of heavy workloads, prevented Mr. Rizo and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SCOTTS also failed to schedule rest periods at all, which, coupled with SCOTTS’s failure to provide adequate rest period coverage, further led to Mr. Rizo and other aggrieved employees not being authorized and permitted to take rest periods. As a result of SCOTTS’s practices and policies, Mr. Rizo 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.

Additionally, on information and belief, during the relevant time period, SCOTTS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Rizo and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Rizo 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, SCOTTS effectively maintained control over Mr. Rizo and other aggrieved employees during rest periods.

SCOTTS 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. Rizo and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rizo 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. SCOTTS has not provided Mr. Rizo 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, SCOTTS has knowingly and intentionally provided Mr. Rizo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SCOTTS issued uniform wage statements to Mr. Rizo 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, SCOTTS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SCOTTS did not record the time Mr. Rizo and other aggrieved employees spent working off-the-clock, improperly rounded Mr. Rizo'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), SCOTTS did not list the correct amount of gross wages and net wages earned by Mr. Rizo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SCOTTS failed to accurately list the total number of hours worked by Mr. Rizo 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 SCOTTS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SCOTTS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SCOTTS also failed to list the correct amount of net wages in violation of section 226(a)(5). SCOTTS 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), SCOTTS willfully failed to maintain accurate payroll records for Mr. Rizo 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. Rizo'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, SCOTTS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Rizo and other aggrieved employees, in violation of section 1198. Also, as stated, SCOTTS engaged in a company-wide practice and/or policy of falsifying Rizo's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Rizo and other aggrieved employees. Furthermore, in light of SCOTTS's failure to provide Mr. Rizo and other aggrieved employees with second 30-minute meal periods to which they were entitled, SCOTTS kept no records of meal start and end times for second meal periods.

Because SCOTTS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rizo 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. Rizo 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. Rizo 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, SCOTTS failed to pay Mr. Rizo 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. Rizo 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.

SCOTTS willfully failed to pay Mr. Rizo and other aggrieved employees who are no longer employed by SCOTTS 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 SCOTTS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Rizo 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, SCOTTS required Mr. Rizo and other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Rizo and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Rizo and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SCOTTS caused Mr. Rizo and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Rizo and other aggrieved employees are therefore 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SCOTTS could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, as set forth herein, SCOTTS systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SCOTTS’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Rizo and other aggrieved employees during lulls in operation. SCOTTS could provide Mr. Rizo and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forced Mr. Rizo and other aggrieved employees to stand throughout the day.

SCOTTS did not provide Mr. Rizo and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Rizo and other aggrieved employees engaged in duties in which the nature of the work required standing, SCOTTS denied them the use of seats nearby during lulls in their work duties. Moreover, SCOTTS did not inform Mr. Rizo and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Rizo and other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to Mr. Rizo and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Rizo and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 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 11050(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)

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because SCOTTS failed to pay Mr. Rizo 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. SCOTTS had a company-wide practice of sending Mr. Rizo 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. Rizo and other aggrieved employees for half of their scheduled shift. For example, on several occasions, Mr. Rizo reported to work for his scheduled shift, but was sent home by SCOTTS’s management immediately before clocking in or within the first hour after clocking in because business was slow or portions of the restaurant would be closed due to bad weather. Although Mr. Rizo and other aggrieved employees reported to work based on the schedule that SCOTTS provided to them, SCOTTS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Rizo and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Rizo 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California

Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

SCOTTS willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because SCOTTS failed to pay Mr. Rizo and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, Mr. Rizo was sometimes required to work an earlier lunch shift, and then told to clock out for more than an hour, before returning to work in early evening for the dinner shift. When this occurred, SCOTTS did not always pay Mr. Rizo and other aggrieved employees an additional hour at minimum wage. Accordingly, SCOTTS required Mr. Rizo and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

SCOTTS’s failure to provide Mr. Rizo and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Mr. Rizo 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 5-2001, 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, SCOTTS, on a company-wide basis, expected Mr. Rizo and other aggrieved employees to report to work in “clean” and “well-pressed” uniforms, including, but not limited to, uniform collared, long-sleeved white cotton dress shirts; black dress slacks; vests; ties; bowties; and/or jackets, while simultaneously failing to provide employees with an adequate number of those uniforms. On information and belief, this forced Mr. Rizo 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. Rizo’s and other aggrieved employees’ uniforms would become stained and/or acquire an unpleasant odor, and Mr. Rizo 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.

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

Thus, SCOTTS 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. Rizo 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.

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

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

Accordingly, Mr. Rizo 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rizo, acting in the public interest as a private attorney general, seeks assessment and collection of civil

penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SCOTTS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Rizo 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: SCOTT'S JACK LONDON SEAFOOD, INC. (via U.S. Certified Mail); SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC. (via U.S. Certified Mail); FOOD SPECIALISTS, INC. (via U.S. Certified Mail); VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC (via U.S. Certified Mail)

CERTIFIED MAIL



7020 1290 0001 8879 0145

one
LAW APC
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CA 90067

SCOTT'S JACK LONDON SEAFOOD, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



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

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2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



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Rizzo v. Food
Specialist, Inc.

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EXHIBIT “3”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 12, 2021

VIA ONLINE SUBMISSION

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

Subject: *Antonio Romero v. Scott's Jack London Seafood, Inc., et al.*

Dear PAGA Administrator:

This office represents Antonio Romero in connection with his claims under the California Labor Code. Mr. Romero was an employee of SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; FOOD SPECIALISTS, INC.; and/or VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC. For the purposes of this letter, Mr. Romero collectively refers to these entities as "SCOTTS."

The employers may be contacted directly at the addresses below:

SCOTT'S JACK LONDON SEAFOOD, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

SCOTT'S SEAFOOD GRILL & BAR
(WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

Mr. Romero 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. Romero seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SCOTTS 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.

SCOTTS employed Mr. Romero as an hourly paid, non-exempt employee from approximately March 1997 to March 15, 2020. Mr. Romero worked for SCOTTS as a Busser and Waiter at

SCOTTS's restaurant located at #2 Broadway, Oakland, California 94607. During his employment, Mr. Romero typically worked six (6) to eight (8) hours or more per day, and five (5) days per week. At the time his employment ended, Mr. Romero was compensated approximately \$14.14 per hour. His job duties included, without limitation, waiting on tables, performing side work, and preparing the restaurant for dinner service.

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

SCOTTS's Company-Wide and Uniform Payroll and HR Practices

SCOTT'S JACK LONDON SEAFOOD, INC.; SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.; and FOOD SPECIALISTS, INC. are California corporations, while VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC is a California limited liability company. Together, they offer restaurant and banquet services at their two locations in Oakland and Walnut Creek, and serve as the exclusive concessionaire for all private events at the Museums at Blackhawk in Danville. Upon information and belief, SCOTTS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek, California, for all non-exempt, hourly paid employees working for SCOTTS in California, including Mr. Romero and other aggrieved employees. At all relevant times, SCOTTS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Romero and other aggrieved employees, regardless of its location or position.

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

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

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.

SCOTTS willfully failed to pay all overtime wages owed to Mr. Romero and other aggrieved employees. During the relevant time period, Mr. Romero and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, SCOTTS 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. SCOTTS's rounding policy resulted in the failure to compensate Mr. Romero and other aggrieved employees fully for all hours worked, causing Mr. Romero and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. SCOTTS's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Romero and other aggrieved employees. To the extent SCOTTS's rounding policy has taken away time worked that was eligible for overtime, Mr. Romero and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, SCOTTS had a company-wide policy and/or practice of limiting the amount of overtime employees could accrue. SCOTTS's written policy states: "There will be no unauthorized overtime. . . . Even if you work in two departments[,] you cannot go over 8 hours unless authorized or scheduled. All shift changes must be authorized by a manager and signed off in the shift change book. . . . We use the shift change book to know what the staffing is for that day[;] if we don't know[,] **it has not been authorized.**" (Emphasis in original). On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with SCOTTS's understaffing policy and assignment of heavy workloads, led Mr. Romero and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks, such as helping set up the restaurant and/or donning and doffing their uniforms. SCOTTS discouraged and impeded Mr. Romero and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, for incurring unauthorized overtime, and Mr. Romero and other aggrieved employees received no compensation for this time.

Third, as stated, SCOTTS 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. On information and belief, SCOTTS also had a practice of failing to schedule meal periods, which further caused Mr. Romero 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. Romero 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, SCOTTS sometimes instructed Mr. Romero to work through all or parts of his meal periods by continuing to wait on tables. Further, on information and belief, because SCOTTS frowned upon employees accruing meal period penalties, SCOTTS would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period, in order to strictly limit

meal penalties that SCOTTS would otherwise owe. Thus, Mr. Romero and other aggrieved employees performed work during meal periods and received no compensation for this time.

SCOTTS knew or should have known that as a result of these company-wide policies and/or practices, Mr. Romero 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. Romero 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. Romero and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

SCOTTS's failure to pay Mr. Romero 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. Romero 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. 5 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, § 11050(2)(K) (defining "Hours Worked").

As set forth above, SCOTTS had a company-wide policy and/or practice of rounding Mr. Romero'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 SCOTTS's restrictions on overtime accrual, SCOTTS systematically failed to record all hours worked, and Mr. Romero and other aggrieved employees were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties.

Furthermore, as stated above, on information and belief, due to SCOTTS's company-wide practices of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Mr. Romero 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, SCOTTS's management pressured employees to clock out for meal

periods to reflect compliant meal periods, upon threat of discipline, but required them to continue working. Thus, SCOTTS systematically failed to pay Mr. Romero and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SCOTTS did not pay at minimum wages for all hours worked by Mr. Romero and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SCOTTS 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, SCOTTS regularly failed to pay at least minimum wages to Mr. Romero 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. Romero 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, SCOTTS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which, combined with the assignment of heavy workloads and/or failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Mr. Romero and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Consequently, Mr. Romero and other aggrieved employees suffered missed, late, and/or interrupted meal periods. As also stated, on information and belief, SCOTTS's management would pressure employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, 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 SCOTTS.

As a result of SCOTTS's practices and/or policies, Mr. Romero 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. Romero

would be required to clock out for his meal periods before the fifth hour and continue performing tasks, due to a lack of coverage and heavy workload. SCOTTS knew or should have known that as a result of its policies, Mr. Romero and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SCOTTS further knew or should have known that it did not pay Mr. Romero and other aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

In addition, during the relevant time period, SCOTTS did not provide Mr. Romero 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. Romero would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Mr. Romero 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.

Moreover, SCOTTS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SCOTTS took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. SCOTTS's company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Romero and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, SCOTTS 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. Romero and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Romero 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, SCOTTS regularly failed to authorize and permit Mr. Romero 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, SCOTTS’s policies and/or practices, including utilization of labor budgets, resultant understaffing, and assignment of heavy workloads, prevented Mr. Romero and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SCOTTS also failed to schedule rest periods at all, which, coupled with SCOTTS’s failure to provide adequate rest period coverage, further led to Mr. Romero and other aggrieved employees not being authorized and permitted to take rest periods. As a result of SCOTTS’s practices and policies, Mr. Romero 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.

Additionally, on information and belief, during the relevant time period, SCOTTS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Romero and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Romero 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, SCOTTS effectively maintained control over Mr. Romero and other aggrieved employees during rest periods.

SCOTTS 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. Romero and other aggrieved employees have not received premium pay for missed rest periods. Alternatively, to the extent that SCOTTS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SCOTTS did not pay other aggrieved employees at the correct rate of pay for premiums because SCOTTS 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, SCOTTS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Romero 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. SCOTTS has not provided Mr. Romero 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, SCOTTS has knowingly and intentionally provided Mr. Romero and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SCOTTS issued uniform wage statements to Mr. Romero 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, SCOTTS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SCOTTS did not record the time Mr. Romero and other aggrieved employees spent working off-the-clock, improperly rounded Mr. Romero'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), SCOTTS did not list the correct amount of gross wages and net wages earned by Mr. Romero and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SCOTTS failed to accurately list the total number of hours worked by Mr. Romero 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 SCOTTS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, SCOTTS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SCOTTS also failed to list the correct amount of net wages in violation of section 226(a)(5). SCOTTS 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), SCOTTS willfully failed to maintain accurate payroll records for Mr. Romero 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. Romero'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, SCOTTS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Romero and other aggrieved employees, in violation of section 1198. Also, as stated, SCOTTS engaged in a company-wide practice and/or policy of falsifying Romero's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Romero and other aggrieved employees. Furthermore, in light of SCOTTS's failure to provide Mr. Romero and other aggrieved employees with second 30-minute meal periods to which they were entitled, SCOTTS kept no records of meal start and end times for second meal periods.

Because SCOTTS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Romero 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. Romero 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. Romero 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, SCOTTS failed to pay Mr. Romero 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. Romero 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.

SCOTTS willfully failed to pay Mr. Romero and other aggrieved employees who are no longer employed by SCOTTS 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 SCOTTS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Romero 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, SCOTTS required Mr. Romero and other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Romero and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Romero and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SCOTTS caused Mr. Romero and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Romero and other aggrieved employees are therefore 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SCOTTS could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, as set forth herein, SCOTTS systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SCOTTS’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

SCOTTS’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Romero and other aggrieved employees during lulls in operation. SCOTTS could provide Mr. Romero and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forced Mr. Romero and other aggrieved employees to stand throughout the day.

SCOTTS did not provide Mr. Romero and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Romero and other aggrieved employees engaged in duties in which the nature of the work required standing, SCOTTS denied them the use of seats nearby during lulls in their work duties. Moreover, SCOTTS did not inform Mr. Romero and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SCOTTS’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Romero and other aggrieved employees were forced to stand during shifts and denied seats. SCOTTS’s failure to provide suitable seating to Mr. Romero and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Romero and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring SCOTTS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 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 11050(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)

SCOTTS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because SCOTTS failed to pay Mr. Romero 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. SCOTTS had a company-wide practice of sending Mr. Romero 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. Romero and other aggrieved employees for half of their scheduled shift. Although Mr. Romero and other aggrieved employees reported to work based on the schedule that SCOTTS provided to them, SCOTTS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Romero and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Romero 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

SCOTTS willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because SCOTTS failed to pay Mr. Romero and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, Mr. Romero was sometimes required to work an earlier lunch shift, and then told to clock out for more than an hour, before returning to work in early evening for the dinner shift. When this occurred, SCOTTS did not always pay Mr. Romero and other aggrieved employees an additional hour at minimum wage. Accordingly, SCOTTS required Mr. Romero and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

SCOTTS's failure to provide Mr. Romero and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Mr. Romero 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 5-2001, 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, SCOTTS, on a company-wide basis, expected Mr. Romero and other aggrieved employees to report to work in "clean" and "well-pressed" uniforms, including, but not limited to, uniform collared, long-sleeved white cotton dress shirts; black dress slacks; vests; ties; bowties; and/or jackets, while simultaneously failing to provide employees with an adequate number of those uniforms. On information and belief, this forced Mr. Romero 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. Romero's and other aggrieved employees' uniforms would become stained and/or acquire an unpleasant odor, and Mr. Romero 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.

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

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

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

Accordingly, Mr. Romero 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Romero, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SCOTTS for violations of California Labor Code sections 201, 202, 203,

204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Romero 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: SCOTT'S JACK LONDON SEAFOOD, INC. (via U.S. Certified Mail); SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC. (via U.S. Certified Mail); FOOD SPECIALISTS, INC. (via U.S. Certified Mail); VALET HOSPITALITY SERVICES - JACK LONDON SQUARE, LLC (via U.S. Certified Mail)

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2712 47

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0084

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

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

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

OFFICIAL USE

Certified Mail Fee

\$ 3.50

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

- ☒ Return Receipt (hardcopy) \$ 2.50
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage

\$ 6.63

Total Postage and Fees

\$ 7.93

Sent To

SCOTT'S SEAFOOD GRILL & BAR (WALNUT CREEK), INC.

Street and Apt. No. 2770 CAMINO DIABLO #B

City, State, ZIP+4® WALNUT CREEK CA 94597

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

See Reverse for Instructions

Postmark
Here

Romero V. Scott's
Seafood Grill & Bar
(Walnut Creek), Inc.

7020 1290 0001 8879 0084

CERTIFIED MAIL®



7020 1290 0001 8879 0077

one
AW APC
y Park East, Ste 1000
CA 90067

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

FOOD SPECIALISTS, INC.
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2712 54

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0077

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

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

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

OFFICIAL USE

Certified Mail Fee

\$ 3.50

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

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

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

FOOD SPECIALISTS, INC.

Street and Apt. No., PO Box No. 2770 CAMINO DIABLO #B

City, State, ZIP+4® WALNUT CREEK CA 94597

Postmark
Here

Romero V. Food
Specialist, Inc.

7020 1290 0001 8879 0077

CERTIFIED MAIL®



7020 1290 0001 8879 0060

AW APC
Park East, Ste 1000
CA 90067

VALET HOSPITALITY SERVICES - JACK LONDON
SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC
2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597



9590 9402 1512 5362 2712 61

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0060

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.50

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

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

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

VALET HOSPITALITY SERVICES - JACK
LONDON SQUARE, LLC

2770 CAMINO DIABLO #B
WALNUT CREEK CA 94597

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

Postmark
Here

Romero v. Valet
Hospitality Services
Jack London Square
LLC

See Reverse for Instructions

7020 1290 0001 8879 0060

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **May 18, 2021**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** 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:

Raymond Gallagher
2 Broadway
Oakland, CA 94607

Registered Agent for
Scott's Jack London Seafood, Inc., a
California corporation

Raymond Gallagher
2 Broadway
Oakland, CA 94607

Registered Agent for
Scott's Seafood Grill & Bar (Walnut Creek),
Inc., a California corporation

Raymond Gallagher
2 Broadway
Oakland, CA 94607

Registered Agent for
Food Specialists, Inc., a California
corporation

Raymond Gallagher
2 Broadway
Oakland, CA 94607

Registered Agent for
Valet Hospitality Services – Jack London
Square, LLC, a California limited liability
company

☐ **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. ***Polaris Sales, Inc.***

☐ **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 PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s). ***Baker & Hostetler LLP***

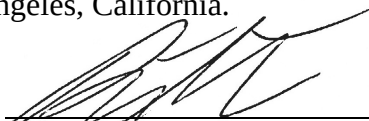
☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by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

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

Executed on **May 18, 2021** at Los Angeles, California.

Riley McIntire
Type/Print Name


Signature