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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/03/2021 at 04:40:00 PM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LLOZELIN GUEVARA QUIROA,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

vs.

QSC FOODS, an unknown business entity;
QSC VENTURES INC., a California
corporation; EVEREST FOOD SERVICES,
INC., a California corporation; STAUFFER
ESCOVEDO MANAGEMENT
INCORPORATED, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2021-00008070-CU-OE-CTL

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Llozelin Guevara Quiroa, individually and on behalf of all other members of
2 the public similarly situated, alleges as follows:

3 JURISDICTION AND VENUE

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

7 **THE PARTIES**

8 4. Plaintiff Llozelin Guevara Quiroa is a resident of San Diego, in San Diego
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Cashier
10 from approximately March 2013 to April 2020. Plaintiff worked for Defendants at their Jack
11 in the Box restaurant located at 7170 Linda Vista Road, in San Diego, California. During her
12 employment, Plaintiff typically worked eight (8) or more hours per day and five (5) or more
13 days per week. Plaintiff's primary job duties included, without limitation, operating the cash
14 register, cooking and preparing food, stocking supplies, maintaining dining area cleanliness,
15 and performing register cash counts.

16 5. QSC FOODS was and is, upon information and belief, an unknown business
17 entity, and at all times hereinafter mentioned, an employer whose employees are engaged
18 throughout this county and the State of California.

19 6. QSC VENTURES INC. was and is, upon information and belief, a California
20 corporation, and at all times hereinafter mentioned, an employer whose employees are
21 engaged throughout this county and the State of California.

22 7. EVEREST FOOD SERVICES, INC. was and is, upon information and belief, a
23 California corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county and the State of California.

25 8. STAUFFER ESCOVEDO MANAGEMENT INCORPORATED was and is,
26 upon information and belief, a California corporation, and at all times hereinafter mentioned,
27 an employer whose employees are engaged throughout this county and the State of California.

28 9. Plaintiff is unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
5 were the partners, agents, owners, or managers of QSC FOODS; QSC VENTURES INC;
6 EVEREST FOOD SERVICES, INC.; and/or STAUFFER ESCOVEDO MANAGEMENT
7 INCORPORATED, at all relevant times.

8 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, QSC FOODS; QSC
10 VENTURES INC.; EVEREST FOOD SERVICES, INC.; STAUFFER ESCOVEDO
11 MANAGEMENT INCORPORATED; and/or DOES 1 through 10 (collectively, “Defendants”
12 or “QSC”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
13 in concert with, each of the other co-Defendants and was acting within the course and scope of
14 such agency, employment, joint venture, or concerted activity with legal authority to act on
15 the others’ behalf. The acts of any and all Defendants were in accordance with, and represent,
16 the official policy of Defendants.

17 12. At all relevant times, Defendants, and each of them, ratified each and every act
18 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
19 and abetted the acts and omissions of each and all the other Defendants in proximately causing
20 the damages herein alleged.

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

24 14. Under California law, Defendants are jointly and severally liable as employers
25 for the violations alleged herein because they have each exercised sufficient control over the
26 wages, hours, working conditions, and employment status of Plaintiff and class members.
27 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
28 controlled their work schedule and/or conditions of employment, determined their rate of pay,

1 and maintained their employment records. Defendants suffered or permitted Plaintiff and
2 class members to work and/or “engaged” Plaintiff and class members so as to create a
3 common-law employment relationship. As joint employers of Plaintiff and class members,
4 Defendants are jointly and severally liable for the civil penalties and all other relief available
5 to Plaintiff and class members under the law.

6 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
7 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
8 members because Defendants have:

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

24 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 there has existed a unity of interest and ownership between Defendants such that any
26 individuality and separateness between the entities has ceased.

27 17. QSC FOODS; QSC VENTURES INC.; EVEREST FOOD SERVICES, INC.;
28 STAUFFER ESCOVEDO MANAGEMENT INCORPORATED; and/or DOES 1 through 10

1 are therefore alter egos of each other.

2 18. Adherence to the fiction of the separate existence of Defendants would permit
3 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
4 from liability for the wrongful acts committed by them under the name QSC.

5 19. Plaintiff further alleges, upon information and belief, that Defendants QSC
6 FOODS; QSC VENTURES INC.; EVEREST FOOD SERVICES, INC.; and STAUFFER
7 ESCOVEDO MANAGEMENT INCORPORATED are alter egos of each other for the
8 following reasons:

- 9 (a) According to the Fictitious Business Name Statement filed with the San
10 Diego County Assessor/Recorder/County Clerk, EVEREST FOOD
11 SERVICES, INC. and STAUFFER ESCOVEDO MANAGEMENT
12 INCORPORATED are registrants for the fictitious business name “QSC
13 FOODS;”
- 14 (b) On the California Secretary of State’s website
15 (<https://businesssearch.sos.ca.gov/>), QSC VENTURES INC. and
16 STAUFFER ESCOVEDO MANAGEMENT INCORPORATED share
17 the same entity address and mailing address, “16166 DEER RIDGE CT,
18 SAN DIEGO, CA 92127;”
- 19 (c) According to their Statement of Information forms filed with the
20 California Secretary of State, QSC VENTURES INC. and STAUFFER
21 ESCOVEDO MANAGEMENT INCORPORATED share the same
22 directors and/or officers, including, but not limited to, Charles [Jacob]
23 Stauffer, who serves as Chief Executive Officer of both entities;
- 24 (d) According to their Statement of Information forms filed with the
25 California Secretary of State, QSC VENTURES INC. and STAUFFER
26 ESCOVEDO MANAGEMENT INCORPORATED share the same
27 Agent for Service of Process, Charles [Jacob] Stauffer; and
- 28 (e) On information and belief, QSC FOODS; QSC VENTURES INC.;

1 EVEREST FOOD SERVICES, INC.; and STAUFFER ESCOVEDO
2 MANAGEMENT INCORPORATED utilize the same standardized
3 employment forms and issue the same employment policies.

4 **GENERAL ALLEGATIONS**

5 20. Defendants own and operate at least six (6) Jack in the Box franchise
6 restaurants throughout San Diego, California. Upon information and belief, Defendants
7 maintain a single, centralized Human Resources (“HR”) department at their company
8 headquarters in San Diego, California, which is responsible for the recruiting and hiring of
9 new employees, and communicating and implementing Defendants’ company-wide policies,
10 including timekeeping policies and meal and rest period policies, to employees throughout
11 California.

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

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

27 23. Defendants continue to employ non-exempt or hourly paid employees in
28 California.

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

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

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

11 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive at least minimum
13 wages for compensation and that they were not receiving at least minimum wages for work
14 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
15 and class members were not paid at least minimum wages for work done off-the-clock.

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

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to rest periods in
25 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
26 additional hour of pay at their regular rates of pay when they were not authorized and
27 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
28 and class members were not authorized and permitted to take compliant rest periods, nor did

1 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
2 pay at their regular rates of pay when they were not authorized and permitted to take a
3 compliant rest period.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive complete and
6 accurate wage statements in accordance with California law. In violation of the California
7 Labor Code, Plaintiff and class members were not provided complete and accurate wage
8 statements.

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

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of all
15 wages earned upon termination of employment. In violation of the California Labor Code,
16 Plaintiff and class members did not receive payment of all wages due, including, but not
17 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
18 within permissible time periods.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of wages
21 during their employment. In violation of the California Labor Code, Plaintiff and class
22 members did not receive payment of all wages, including, but not limited to, overtime wages,
23 minimum wages, and/or meal and rest period premium wages, within permissible time
24 periods.

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

business-related expenses and costs incurred.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of
3 the specific provisions of the California Labor Code alleged to have
4 been violated, including the facts and theories to support the alleged
5 violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall notify the employer and the aggrieved employee or
10 representative by certified mail that it does not intend to investigate the
11 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
12 the postmark date of the aggrieved employee's notice. Upon receipt of
13 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
14 (65) calendar days of the postmark date of the aggrieved employee's
15 notice, the aggrieved employee may commence a civil action pursuant
16 to California Labor Code section 2699 to recover civil penalties.

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

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated (other than those listed in Section 2699.5), including the
25 facts and theories to support the alleged violation.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice sent by the aggrieved
3 employee or representative. The employer shall give written notice
4 within that period of time by certified mail to the aggrieved employee or
5 representative and by online filing with the LWDA if the alleged
6 violation is cured, including a description of actions taken, and no civil
7 action pursuant to Section 2699 may commence. If the alleged violation
8 is not cured within the 33-day period, the aggrieved employee may
9 commence a civil action pursuant to Section 2699.

10 42. On March 1, 2021, Plaintiff provided written notice by online filing to the
11 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
14 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
15 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
16 Plaintiff PAGA Case Number LWDA-CM-823110-21. A true and correct copy of Plaintiff's
17 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

21 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
22 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
24 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

25 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare
28 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

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

CLASS ACTION ALLEGATIONS

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

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

51. Plaintiff’s proposed class consists of and is defined as follows:

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

52. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly

1 paid employees in California and who received at least one wage
2 statement within one (1) year prior to the filing of the initial
complaint until the date of trial (“Subclass”).

3 53. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- 9 (a) Whether Defendants required Plaintiff and class members to work over
10 eight (8) hours per day, over twelve (12) hours per day, or over forty
11 (40) hours per week and failed to pay all legally required overtime
12 compensation to Plaintiff and class members;
- 13 (b) Whether Defendants failed to pay Plaintiff and class members at least
14 minimum wages for all hours worked;
- 15 (c) Whether Defendants failed to provide Plaintiff and class members with
16 meal periods;
- 17 (d) Whether Defendants failed to authorize and permit Plaintiff and class
18 members to take rest periods;
- 19 (e) Whether Defendants provided Plaintiff and class members with
20 complete and accurate wage statements as required by California Labor
21 Code section 226(a);
- 22 (f) Whether Defendants maintained accurate payroll records as required by
23 California Labor Code section 1174(d);
- 24 (g) Whether Defendants failed to pay earned overtime wages, minimum
25 wages, and/or meal and rest period premium wages due to Plaintiff and
26 class members upon their discharge;
- 27 (h) Whether Defendants failed timely to pay overtime wages, minimum
28 wages, and/or meal and rest period premium wages to Plaintiff and class

members during their employment;

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

56. 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 Plaintiff 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: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any

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

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

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

22 **FIRST CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 58. Labor Code section 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code

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

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

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

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

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

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

1 64. First, during the relevant time period, Defendants had a company-wide policy
2 and/or practice of discouraging and impeding Plaintiff and class members from recording
3 hours worked that were outside of their scheduled shifts, in order to limit the amount of
4 overtime employees could accrue. On information and belief, this limitation on overtime
5 accrual was based on a company-wide policy of staffing restaurant locations strictly based on
6 the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled
7 with Defendants' understaffing policy and assignment of heavy workloads, led Plaintiff and
8 class members to work off-the-clock before and after their scheduled shift times in order to
9 complete their assigned tasks. For example, Plaintiff was required to complete register cash
10 counts before she was permitted to clock in at her scheduled shift start-time, because
11 Defendants' managers expected her to begin taking customer orders the moment she was
12 clocked in. Additionally, Plaintiff was required to continue performing work duties after she
13 clocked out, including performing register cash counts and waiting for Defendants' managers
14 to verify her register cash counts, approximately four (4) times per week, which could take up
15 to 30 minutes to complete. Defendants failed to track this time spend working before and
16 after scheduled shifts, and Plaintiff and class members received no compensation for this time.

17 65. Moreover, on information and belief, Defendants engaged in a policy and/or
18 practice of altering time records at the discretion of management. For example, Defendants'
19 management would adjust Plaintiff's and class members' time records and delete time
20 recorded before and/or after their scheduled shifts to avoid having to pay overtime wages. As
21 a result of Defendants' policy and/or practice, Plaintiff and class members were not paid
22 overtime wages for all overtime hours incurred.

23 66. Second, as stated, Defendants had, and continue to have, a uniform practice
24 and/or policy of understaffing their restaurant locations which resulted in a lack of adequate
25 meal period coverage, because there were too few employees on duty to handle the heavy
26 workload. Because Defendants did not employ or staff an adequate number of employees to
27 meet their productivity expectations, which included meeting a 180-second time target/goal
28 for drive-thru customers and fully re-stocking all kitchen and dining area inventory by the end

1 of each shift, there was no one to available to relieve employees needing meal period
2 coverage, and Plaintiff and class members were not always afforded uninterrupted 30-minute
3 meal periods during shifts when they were entitled to receive a meal period. For example,
4 Defendants' managers would interrupt Plaintiff's meal periods by requiring her to fill ice
5 buckets for use in the dining area soda fountain, in order to maintain customer satisfaction.
6 Consequently, Plaintiff and class members were required to work through and/or had their
7 unpaid meal periods interrupted in order to complete their assigned duties and handle
8 customer demand, time for which they were not paid.

9 67. Moreover, Defendants had a practice of failing to schedule meal periods, which
10 further caused Plaintiff and class members to not be relieved of their duties for compliant
11 meal periods. Also, Defendants' company-wide timekeeping system further prevented
12 Plaintiff and class members from recording all hours worked when their meal periods were
13 shortened or interrupted, because the system locked out Plaintiff and class members once they
14 clocked out for a meal period and would not permit them to clock back in from a meal period
15 before 30 minutes elapsed. Further, on information and belief, because Defendants frowned
16 upon employees accruing meal period penalties, Defendants would adjust Plaintiff's and class
17 members' time records and/or pressured employees to clock out for meal periods to reflect
18 compliant meal periods, regardless of whether they had received a compliant meal period, in
19 order to strictly limit meal penalties that Defendants would otherwise owe. Thus, Plaintiff and
20 class members performed work during meal periods and received no compensation for this
21 time.

22 68. Defendants knew or should have known that, as a result of these company-wide
23 practices and/or policies, Plaintiff and class members were performing their assigned duties
24 off-the-clock and during meal periods, and were suffered or permitted to perform work for
25 which they were not paid. Because Plaintiff and class members regularly worked shifts of
26 eight (8) hours a day or more, or forty (40) hours a week or more, much of this off-the-clock
27 work qualified for overtime premium pay. Therefore, Plaintiff and class members were not
28 paid overtime wages for all of the overtime hours they actually worked.

69. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

70. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

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

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

72. 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 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”).

73. As stated above, due to Defendants' restrictions on overtime accrual, Defendants systematically failed to record all hours worked and Plaintiff and class members were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties, such as completing opening and/or closing cash register reconciliation.

74. Additionally, as set forth above, due to Defendants' uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, Defendants' timekeeping system did not

1 permit Plaintiff and class members to clock back in early when their meal periods were
2 interrupted or cut short. Additionally, as stated, in order to prevent employees from accruing
3 meal period penalties, upon information and belief, Defendants' management adjusted
4 employee time records and/or pressured employees to clock out for meal periods to reflect
5 compliant meal periods, but required them to continue working. Thus, Defendants
6 systematically failed to pay Plaintiff and class members for actual hours worked during unpaid
7 meal periods because these hours were not always correctly recorded.

8 75. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
9 and class members. To the extent that these off-the-clock hours did not qualify for overtime
10 premium payment, Defendants did not pay at least minimum wages for those hours worked
11 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
12 1198.

13 76. As result, Defendants regularly failed to pay at least minimum wages to
14 Plaintiff and class members for all of the hours they worked in violation of California Labor
15 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code
16 section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an
17 amount equal to the wages unlawfully unpaid and interest thereon.

18 **THIRD CAUSE OF ACTION**

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

20 **Violations**

21 **(Against all Defendants)**

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

24 78. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
3 2012).

4 79. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

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

13 81. As stated above, Defendants had, and continue to have, company-wide policies
14 and/or practices of understaffing pursuant to their labor budget practices, while
15 simultaneously assigning heavy workloads, and failing to schedule meal periods, which
16 resulted in a lack of meal period coverage and prevented Plaintiff and class members from
17 taking all timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff
18 and class members had to work through all or part of their meal periods, had their meal
19 periods interrupted, and/or had to wait extended periods of time before taking meal periods.
20 For example, Plaintiff was required to take her meal periods late after having worked in
21 excess of five (5) hours or more into her shift in order to meet the restaurant's customer
22 demand. Moreover, Plaintiff's meal periods were frequently interrupted and/or shortened in
23 order to assist Defendants' managers with tasks such as loading ice buckets for the dining area
24 soda fountain. Plaintiff and class members did not sign valid meal period waivers on days
25 that they were entitled to meal periods and were not relieved of all duties.

26 82. As also stated, Defendants' company-wide timekeeping system prevented
27 Plaintiff and class members from recording all hours worked when their meal periods were
28 shortened or interrupted, because the system locked out Plaintiff and class members once they

1 clocked out for a meal period and would not permit them to clock back in from a meal period
2 before 30 minutes elapsed. Additionally, as stated, on information and belief, Defendants'
3 management would adjust Plaintiff's and class members' time records and/or pressured
4 employees to clock out for meal periods to reflect compliant meal periods, regardless of
5 whether they had received a compliant meal period or not, in order to strictly limit meal
6 penalties that would need to be paid by Defendants.

7 83. At all times mentioned herein, Defendants knew or should have known that as a
8 result of their policies, Plaintiff and class members were not actually relieved of all duties to
9 take timely, uninterrupted meal periods. Defendants further knew or should have known that
10 they did not pay Plaintiff and class members meal period premium wages when meal periods
11 were late, interrupted, shortened, or missed.

12 84. Furthermore, Defendants engaged in a company-wide practice and/or policy of
13 not paying all meal period premiums owed when compliant meal periods are not provided.
14 Because of this practice and/or policy, Plaintiff and class members have not received premium
15 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
16 Plaintiff and class members compliant meal periods in violation of California Labor Code
17 sections 226.7, 512(a), 516, and failed to pay the full premiums due.

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

22 **FOURTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 24 **(Against all Defendants)**

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

27 87. At all relevant times herein set forth, the applicable IWC Wage Order and
28 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class

1 members' employment by Defendants.

2 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
3 employer shall authorize and permit all employees to take rest periods, which insofar as
4 practicable shall be in the middle of each work period" and that the "rest period time shall be
5 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
6 hours or major fraction thereof" unless the total daily work time is less than three and one-half
7 (3½) hours.

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

19 90. Defendants regularly failed to authorize and permit Plaintiff and class members
20 to take a ten (10) minute rest period per each four (4) hour period worked or major fraction
21 thereof. As with meal periods, Defendants' company-wide practices, including utilizing labor
22 budgets and assigning heavy workloads, prevented Plaintiff and class members from being
23 relieved of all duty to take their rest periods. Additionally, Defendants failed to schedule rest
24 periods, which, coupled with Defendants' failure to provide adequate rest period coverage,
25 further led to Plaintiff and class members not being authorized and permitted to take
26 compliant rest periods.

27 91. Furthermore, upon information and belief, Defendants maintained a company-
28 wide on-premises rest period policy, which mandated that Plaintiff and class members remain

on Defendants' premises during their rest periods. Because Plaintiff and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

92. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff missed rest periods three (3) times per week to meet customer demand and due to a lack of rest period coverage.

93. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premium wages due, in violation of Labor Code sections 226.7, 516, and the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

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

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

96. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total
2 hours worked, and all applicable rates of pay.

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

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

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

27 100. California Labor Code section 1198 provides that the maximum hours of work
28 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as

1 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
2 employment of any employees for longer hours than those fixed by the order or under
3 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
4 Wage Order, employers are required to keep accurate time records showing when the
5 employee begins and ends each work period and meal period. During the relevant time
6 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
7 and meal period start and stop times for Plaintiff and Subclass members, in violation of
8 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
9 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
10 periods were taken regardless of if or when meal periods were actually taken, and thereby
11 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.

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

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

26 **SIXTH CAUSE OF ACTION**

27 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 28 **Termination**

(Against all Defendants)

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

104. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages, that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

105. 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.

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

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

SEVENTH CAUSE OF ACTION

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

(Against all Defendants)

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

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

110. 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.

111. 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.

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

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

114. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from

1 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

2 **EIGHTH CAUSE OF ACTION**

3 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

4 **(Against all Defendants)**

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

7 116. At all times herein set forth, California Labor Code section 2802 provides that
8 an employer must reimburse employees for all necessary expenditures and losses incurred by
9 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
10 to prevent employers from passing off their cost of doing business and operating expenses on
11 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
12 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
13 equipment are required by the employer or are necessary to the performance of a job, such
14 tools and equipment shall be provided and maintained by the employer, except that an
15 employee whose wages are at least two (2) times the minimum wage provided herein may be
16 required to provide and maintain hand tools and equipment customarily required by the trade
17 or craft.”

18 117. First, Defendants had a company-wide policy of requiring Plaintiff and class
19 members to utilize their own personal vehicles for work purposes, such as obtaining additional
20 ingredients and inventory from other restaurant locations Defendants owned and operated, but
21 failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff
22 periodically was required to drive 12 miles roundtrip to Defendants’ Jack in the Box
23 restaurant location on 1340 Rosecrans St. in San Diego to obtain food or restaurant supplies,
24 such as french fries, buns, hamburger patties, or fryer baskets. Although Defendants required
25 Plaintiff and class members to utilize their own vehicles to travel to and from Defendants’
26 other restaurant locations, Defendants did not reimburse them for all of their travel expenses.

27 118. Second, during the relevant time period, Defendants required Plaintiff and class
28 members to wear uniforms bearing the company logo, including uniform shirts and/or hats.

1 However, Defendants did not provide their employees with sufficient uniforms to wear for
2 their shifts throughout the week. For example, Defendants only provided Plaintiff and class
3 members with one (1) shirt and one (1) hat during their employment. Because Defendants
4 failed to provide Plaintiff and class members with an adequate number of uniform items in
5 relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and
6 class members were forced to wash their uniforms more frequently than they otherwise do
7 laundry, and incur expenses in doing so. For example, due to the nature of restaurant work,
8 Plaintiff's and class members' uniforms would become stained with grease, sweaty, soiled,
9 and/or acquire an unpleasant odor such that they were unable to mix these clothes in with
10 other laundry. As a result, they had to wash their uniform items separately from their other
11 clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms.
12 Specifically, Plaintiff was required to wash her uniform items separately from any other
13 clothing items at a laundromat, usually at a cost of approximately \$15 per week. Thus,
14 Defendants failed to maintain uniforms they required Plaintiff and class members to wear
15 during their shifts and forced them to incur the cost of maintaining employee uniforms.

16 119. Defendants could have provided Plaintiff and class members with the actual
17 tools for use on the job, such as company vehicles, as well as an adequate number of uniforms
18 or access to laundering services. Or, Defendants could have reimbursed employees for the
19 costs of their mileage and laundering expenses or provided a uniform maintenance allowance.
20 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
21 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

22 120. Defendants' company-wide policy and/or practice of passing on their operating
23 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
24 have intentionally and willfully failed to reimburse Plaintiff and other class members for
25 necessary business-related expenses and costs.

26 121. Plaintiff and class members are entitled to recover from Defendants their
27 business-related expenses incurred during the course and scope of their employment, plus
28 interest.

1 **NINTH CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 123. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
9 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.
10 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
11 civil penalties for violations of those Labor Code sections not found in section 2699.5,
12 including sections 516 1182.12, and 2810.5.

13 124. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 wage order for Defendants’ failure to compensate Plaintiff and other
17 aggrieved employees with all required overtime pay and failure to
18 properly calculate the overtime rates paid to Plaintiff and other
19 aggrieved employees, as alleged herein;
- 20 (b) Violation of Labor Code sections 1182.12. 1194, 1197, 1197.1, 1198,
21 and the applicable IWC wage order for Defendants’ failure to
22 compensate Plaintiff and other aggrieved employees with at least
23 minimum wages for all hours worked, as alleged herein;
- 24 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
25 applicable IWC wage order for Defendants’ failure to provide Plaintiff
26 and other aggrieved employees with meal periods, as alleged herein;
- 27 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
28 IWC wage order for Defendants’ failure to authorize and permit

1 Plaintiff and other aggrieved employees to take rest periods, as alleged
2 herein;

3 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
4 wage order for failure to provide accurate and complete wage statements
5 to Plaintiff and other aggrieved employees, as alleged herein;

6 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
7 IWC wage order for failure to maintain payroll records as alleged
8 herein;

9 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
10 earned wages upon termination, as alleged herein;

11 (h) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment, as alleged herein;

13 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
14 and other aggrieved employees for all business expenses necessarily
15 incurred, as alleged herein; and

16 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
17 provide written notice of information material to Plaintiff's and other
18 aggrieved employees' employment with Defendants, as set forth below.

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

1 2810.5(a)(1)(A)-(C).

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

9 **TENTH CAUSE OF ACTION**

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

11 **Unlawful Business Practices**

12 **(Against all Defendants)**

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

15 128. 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.

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

23 130. 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.*

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

27 132. At all relevant times herein, California's Wage Theft Prevention Act was
28 enacted to ensure that employers provide employees with basic information material to their

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

10 133. At all relevant times, on information and belief, Defendants failed, on a
11 company-wide basis, to provide written notice to Plaintiff and class members that lists the
12 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
13 to provide Plaintiff and class members with written notice of basic information regarding their
14 employment with Defendants is in violation of Labor Code section 2810.5.

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

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

25 **ELEVENTH CAUSE OF ACTION**

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

27 **Unfair Business Practices**

28 **(Against all Defendants)**

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

3 137. Defendants are “persons” as defined by California Business & Professions
4 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
5 and/or associations.

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

11 139. Defendants’ activities, namely Defendants’ company-wide practice and/or
12 policy of not paying Plaintiff and class members all meal and rest period premium wages due
13 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
14 compensation guarantee and enhanced enforcement implemented by section 226.7. The
15 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
16 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
17 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
18 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
19 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
20 unfair business practice in violation of California Business & Professions Code sections
21 17200, *et seq.* (Id.)

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

26 141. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
27 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
28 benefits implemented by section 226.7 withheld and retained by Defendants during a period

1 that commences four years prior to the filing of this complaint; a permanent injunction
2 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
3 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
4 Procedure section 1021.5 and other applicable laws; and an award of costs.

5 **REQUEST FOR JURY TRIAL**

6 Plaintiff requests a trial by jury.

7 **PRAYER FOR RELIEF**

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

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

13 **Class Certification**

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

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

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

appropriate.

As to the Fourth Cause of Action

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

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

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

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

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

8 37. For all actual, consequential and incidental losses and damages, according to
9 proof;

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

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

14 40. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 41. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

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

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

25 44. For statutory penalties according to proof pursuant to California Labor Code
26 section 210;

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

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

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

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

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

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

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

13 51. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 52. For attorneys' fees and costs pursuant to California Labor Code section
16 2802(c), or as otherwise provided by law; and

17 53. For such other and further relief as the Court may deem equitable and
18 appropriate.

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

20 54. That the Court declare, adjudge and decree that Defendants violated the
21 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
22 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
23 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
24 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
25 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
26 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
27 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
28 employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to

1 provide written notice of information material to employment);

2 55. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
3 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
4 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
5 1197.1, 1198, 2802, and 2810.5;

6 56. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
8 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
9 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

11 58. For such other and further relief as the Court may deem equitable and
12 appropriate.

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

14 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
15 to provide Plaintiff and class members all overtime wages due to them, failing to provide
16 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
17 class members all meal periods, failing to authorize and permit Plaintiff and class members to
18 take all rest periods, failing to provide Plaintiff and class members accurate and complete
19 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
20 failing timely to pay Plaintiff and class members all earned wages during employment, failing
21 to reimburse Plaintiff and class members for business-related expenses, and failing to provide
22 written notice of information material to employment constitutes an unlawful business
23 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

24 60. For restitution of unpaid wages to Plaintiff and all class members and
25 prejudgment interest from the day such amounts were due and payable;

26 61. For the appointment of a receiver to receive, manage and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections

17200, *et seq.*;

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

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

As to the Eleventh Cause of Action

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

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

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

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

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

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

Dated: June 3, 2021

Respectfully submitted,

Capstone Law APC

By:


Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Llozelin Guevara Quiroa

EXHIBIT 1

ALEXANDER LIMA
310.712.8142 Direct
Alexander.Lima@capstonelawyers.com

March 1, 2021

VIA ONLINE SUBMISSION

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

Subject: *Llozelin Guevara Quiroa v. QSC Foods, et al.*

Dear PAGA Administrator:

This office represents Llozelin Guevara Quiroa in connection with her claims under the California Labor Code. Ms. Guevara Quiroa was an employee of QSC FOODS; QSC VENTURES INC.; EVEREST FOOD SERVICES, INC.; and/or STAUFFER ESCOVEDO MANAGEMENT INCORPORATED. For the purpose of this letter, Ms. Guevara Quiroa collectively refers to these entities as “QSC.”

The employers may be contacted directly at the addresses below:

QSC FOODS
16166 DEER RIDGE CT.
SAN DIEGO, CA 92127

QSC VENTURES INC.
16166 DEER RIDGE CT.
SAN DIEGO, CA 92127

STAUFFER ESCOVEDO MANAGEMENT
INCORPORATED
16166 DEER RIDGE CT.
SAN DIEGO, CA 92127

EVEREST FOOD SERVICES, INC.
1755 OCEAN AVE., APT 514
SANTA MONICA, CA 90401

Ms. Guevara Quiroa 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”). Ms. Guevara Quiroa seeks relief on behalf of herself, the State of California, and other persons who are or were employed by QSC in California as a non-exempt, hourly paid employee 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.

QSC employed Ms. Guevara Quiroa as a non-exempt, hourly paid Cashier from approximately March 2013 to April 2020. Ms. Guevara Quiroa worked for QSC at its Jack in the Box restaurant located at 7170 Linda Vista Road, San Diego, California. She typically worked eight (8) hours or

more per day, five (5) days per week, and approximately 40 hours per week. At the time her employment ended, Ms. Guevara Quiroa was compensated approximately \$13.00 per hour. Her job duties included operating the cash register, taking customer orders, cooking and preparing food, stocking supplies, maintaining dining area cleanliness, and performing register cash counts.

QSC has committed one or more of the following Labor Code violations against Ms. Guevara Quiroa, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

QSC FOODS is a business entity of unknown origin, while QSC VENTURES INC.; EVEREST FOOD SERVICES, INC.; and STAUFFER ESCOVEDO MANAGEMENT INCORPORATED are California corporations. Upon information and belief, QSC operates approximately 6 Jack in the Box franchise restaurant locations in California. Upon information and belief, QSC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for QSC in California, including Ms. Guevara Quiroa and other aggrieved employees. At all relevant times, QSC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Guevara Quiroa and other aggrieved employees, regardless of their location or position.

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

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

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

¹ These facts, theories, and claims are based on Ms. Guevara Quiroa’s experience and counsel’s review of those records currently available relating to Ms. Guevara Quiroa’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, Ms. Guevara Quiroa reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

QSC willfully failed to pay all overtime wages owed to Ms. Guevara Quiroa and other aggrieved employees. During the relevant time period, Ms. Guevara Quiroa 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 time period, QSC had a company-wide policy and/or practice of discouraging and impeding Ms. Guevara Quiroa and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with QSC's understaffing policy and assignment of heavy workloads, led Ms. Guevara Quiroa and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. Guevara Quiroa was required to complete register cash counts before she was permitted to clock in at her scheduled shift start-time, because QSC's managers expected her to begin taking customer orders the moment she was clocked in. Additionally, Ms. Guevara Quiroa was required to continue performing work duties after she clocked out, including performing register cash counts and waiting for QSC's managers to verify her register cash counts, approximately four (4) times per week, which could take up to 30 minutes to complete. QSC failed to track this time spent working before and after scheduled shifts, and Ms. Guevara Quiroa and other aggrieved employees received no compensation for this time.

Further, on information and belief, QSC engaged in a policy and/or practice of altering time records at the discretion of management. For example, QSC's management would adjust Ms. Guevara Quiroa's and other aggrieved employees' time records and delete time recorded before and/or after their scheduled shifts to avoid having to pay overtime wages. As a result of QSC's policy and/or practice, Ms. Guevara Quiroa and other aggrieved employees were not paid overtime wages for all overtime hours incurred.

Second, as stated, QSC had, and continues to have, a uniform practice and/or policy of understaffing its restaurant locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Because QSC did not employ or staff an adequate number of employees to meet their productivity expectations, which included meeting a 180-second time target/goal for drive-thru customers and fully re-stocking all kitchen and dining area inventory by the end of each shift, there was no one available to relieve employees needing meal period coverage, and Ms. Guevara Quiroa and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, QSC's managers would interrupt Ms. Guevara Quiroa's meal periods by requiring her to fill ice buckets for use in the dining area soda fountain, in order to maintain customer satisfaction. Consequently, Ms. Guevara Quiroa and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Moreover, QSC had a practice of failing to schedule meal periods, which further caused Ms. Guevara Quiroa and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Also, QSC's company-wide timekeeping system further prevented Ms. Guevara Quiroa and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Guevara Quiroa and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Further, on information and belief, because QSC frowned upon employees accruing meal period penalties, QSC would adjust Ms. Guevara Quiroa's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that QSC would otherwise owe. Thus, Ms. Guevara Quiroa and other aggrieved employees performed work during meal periods and received no compensation for this time.

QSC knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Guevara Quiroa and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Guevara Quiroa and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, much of this off-the-clock work qualified for overtime premium pay.

Furthermore, QSC did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, QSC paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, QSC failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, QSC failed to pay all overtime wages by paying a lower overtime rate than required.

QSC's failure to pay Ms. Guevara Quiroa 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. Ms. Guevara Quiroa 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 stated above, due to QSC's restrictions on overtime accrual, QSC systematically failed to record all hours worked and Ms. Guevara Quiroa and other aggrieved employees were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties, such as completing opening and/or closing cash register reconciliation.

Additionally, as set forth above, due to QSC's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Guevara Quiroa and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, QSC's timekeeping system did not permit Ms. Guevara Quiroa and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Additionally, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, QSC's management adjusted employee time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, but required them to continue working. Thus, QSC systematically failed to pay Ms. Guevara Quiroa and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, QSC did not pay minimum wages for all hours worked by Ms. Guevara Quiroa and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, QSC 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, QSC regularly failed to pay at least minimum wages to Ms. Guevara Quiroa 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. Ms. Guevara Quiroa 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, and 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, QSC had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Guevara Quiroa and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Guevara Quiroa and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait

extended periods of time before taking meal periods. For example, Ms. Guevara Quiroa was required to take her meal periods late after having worked in excess of five (5) hours or more into her shift in order to meet the restaurant's customer demand. Moreover, Ms. Guevara Quiroa's meal periods were frequently interrupted and/or shortened in order to assist QSC's managers with tasks such as loading ice buckets for the dining area soda fountain.

As also stated, QSC's company-wide timekeeping system prevented Ms. Guevara Quiroa and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Guevara Quiroa and other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes elapsed. Additionally, as stated, on information and belief, QSC's management would adjust Ms. Guevara Quiroa's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by QSC.

Moreover, QSC did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Guevara Quiroa 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.

At all times mentioned herein, QSC knew or should have known that as a result of its policies, Ms. Guevara Quiroa and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. QSC further knew or should have known that it did not pay Ms. Guevara Quiroa and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, or missed.

Furthermore, QSC 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, Ms. Guevara Quiroa and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that QSC did pay other aggrieved employees for missed, late, and interrupted meal periods, QSC did not pay other aggrieved employees at the correct rate of pay for premium wages because QSC 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, QSC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Guevara Quiroa and other aggrieved employees are therefore 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, and 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, QSC regularly failed to authorize and permit Ms. Guevara Quiroa 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, QSC’s policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Guevara Quiroa and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. QSC also failed to schedule rest periods, which, coupled with QSC’s failure to provide adequate rest period coverage, further led to Ms. Guevara Quiroa and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, QSC maintained and implemented a company-wide practice and/or policy requiring that Ms. Guevara Quiroa and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Guevara Quiroa and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, QSC effectively maintained control over Ms. Guevara Quiroa and other aggrieved employees during rest periods, and, as a result of this rest period policy, QSC did not relinquish control over Ms. Guevara Quiroa and other aggrieved employees during rest periods.

As a result of QSC’s practices and policies, Ms. Guevara Quiroa and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, when Ms. Guevara Quiroa would miss her rest periods at least three (3) times per week in order to complete all of the work-related duties QSC assigned to her.

QSC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Guevara Quiroa and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that QSC did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, QSC did not pay other aggrieved employees at the correct rate of pay for premium wages because QSC 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, QSC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Guevara Quiroa and other aggrieved employees are therefore 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. QSC has not provided Ms. Guevara Quiroa 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 wages 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, QSC has knowingly and intentionally provided Ms. Guevara Quiroa and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, QSC issued uniform wage statements to Ms. Guevara Quiroa 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, QSC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because QSC did not record the time Ms. Guevara Quiroa and other aggrieved employees spent working off-the-clock and during deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), QSC did not list the correct amount of gross wages and net wages earned by Ms. Guevara Quiroa and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, QSC failed to accurately list the total number of the hours worked by Ms. Guevara Quiroa 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).

Furthermore, because QSC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, QSC did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). QSC 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 premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, 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 hours 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), QSC willfully failed to maintain accurate payroll records for Ms. Guevara Quiroa 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.

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. At all relevant times, as stated, QSC engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Guevara Quiroa and other aggrieved employees in violation of section 1198. As stated, QSC engaged in a company-wide practice and/or policy of falsifying Ms. Guevara Quiroa’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 Ms. Guevara Quiroa and other aggrieved employees. Furthermore, in light of QSC’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, QSC kept no records of meal start and end times for second meal periods.

Because QSC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Guevara Quiroa 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, Ms. Guevara Quiroa 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.

Ms. Guevara Quiroa 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, QSC failed to pay Ms. Guevara Quiroa and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Guevara Quiroa 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.

QSC willfully failed to pay Ms. Guevara Quiroa and other aggrieved employees who are no longer employed by QSC all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving QSC's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Guevara Quiroa 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 § 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, QSC had a company-wide policy of requiring Ms. Guevara Quiroa and other aggrieved employees to utilize their own personal vehicles for work purposes, such as obtaining additional ingredients and inventory from another QSC restaurant locations, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Guevara Quiroa periodically was required to

drive 12 miles roundtrip to the QSC Jack-in-the Box restaurant location on 1340 Rosecrans St. in San Diego to obtain food or restaurant supplies, such as french fries, buns, hamburger patties, or fryer baskets. Although QSC required Ms. Guevara Quiroa and other aggrieved employees to utilize their own vehicles to travel to and from other QSC restaurant locations, QSC did not reimburse them for all of their travel expenses.

Second, during the relevant time period, QSC required Ms. Guevara Quiroa and other aggrieved employees to wear uniforms bearing the company logo, including uniform shirts and/or hats. However, QSC did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, QSC only provided Ms. Guevara Quiroa and other aggrieved employees with one (1) shirt and one (1) hat during their employment. Because QSC failed to provide Ms. Guevara Quiroa and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Guevara and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Guevara Quiroa's and other aggrieved employees' uniforms would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms. Specifically, Ms. Guevara Quiroa was required to wash her uniform items separately from any other clothing items at a laundromat, usually at a cost of approximately \$15 per week. Thus, QSC failed to maintain uniforms they required Ms. Guevara Quiroa and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

QSC could have provided Ms. Guevara Quiroa and other aggrieved employees with the actual tools for use on the job, such as company vehicles as well as an adequate number of uniforms or access to laundering services. Or, QSC could have reimbursed employees for the costs of their mileage and laundering expenses or provided a uniform maintenance allowance. Instead, QSC passed these operating costs off onto Ms. Guevara Quiroa and other aggrieved employees. At all relevant times, Ms. Guevara Quiroa did not earn at least two (2) times the minimum wage.

Thus, QSC 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. Ms. Guevara Quiroa 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.

QSC failed to provide Ms. Guevara Quiroa and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

Ms. Guevara Quiroa and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." QSC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Guevara Quiroa's and other aggrieved employees' rights by violating various sections of the California Labor Code.

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

Therefore, on behalf of all aggrieved employees, Ms. Guevara Quiroa seeks all applicable 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:

Alexander Lima
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 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: QSC FOODS (via U.S. Certified Mail); QSC VENTURES INC. (via U.S. Certified Mail);
EVEREST FOOD SERVICES, INC. (via U.S. Certified Mail); STAUFFER ESCOVEDO
MANAGEMENT INCORPORATED (via U.S. Certified Mail)

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On **June 3, 2021** I served the documents described as:
FIRST AMENDED COMPLAINT
on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓]
to interested parties as follows [or] [] as stated on the attached service list:

☒ **ELECTRONIC FILE & SERVE:** A true and correct copy of the above-referenced document(s) was electronically served on counsel of record by means of transmitting the document to One Legal Court Services website in accordance with the Court's Order.

Executed this **3RD day of June, 2021** at Los Angeles, California.

Signature _____