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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SAUL PEREZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

PANDA EXPRESS, INC., a California
corporation; PANDA RESTAURANT
GROUP, INC., a California corporation;
PANDA EXPRESS, LLC, a California
limited liability company; and DOES 1-50,
inclusive,

Defendants.

Case No.

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT:

- 1) Civil Penalties Under the Private Attorneys'
General Act, Labor Code Section 2698 *et*
seq.

DEMAND FOR JURY TRIAL

Plaintiff SAUL PEREZ ("Plaintiff"), individually and on behalf of the general public as private attorneys general, hereby asserts claims against defendant PANDA EXPRESS, INC, a California corporation; PANDA RESTAURANT GROUP, INC., a California corporation; PANDA EXPRESS, LLC, a California limited liability company; and DOES 1-50, inclusive (collectively "PANDA" or "Defendants") as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys

1 General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq.* PAGA permits "aggrieved
2 employees" to bring a lawsuit as a representative action on behalf of themselves and all other
3 current and former employees, to recover civil penalties and address an employer's violations of
4 the California Labor Code.

5 2. Plaintiff brings this action pursuant to the PAGA on a representative basis. Any
6 and all persons who are or were employed as non-exempt restaurant employees, however titled,
7 by Defendants (the "Aggrieved Employees" or "Non-Exempt Employees") in California during
8 the liability period (as tolled by Emergency Rule 9)] until the resolution of this lawsuit.¹

9 3. Plaintiff brings this suit on behalf of himself and the Aggrieved Non-Exempt
10 Employees during the relevant time period to recover civil penalties and address the employer's
11 violations of the California Labor Code and the IWC Wage Order 5-2001.

12 4. Plaintiff alleges that Defendants consistently maintained and enforced against their
13 Non-Exempt Employees, among others, the following unlawful practices and policies, in
14 violation of California state wage and hour laws: a) failing to pay wages, including overtime; b)
15 failing to properly calculate sick leave; c) failing to provide lawful meal and rest periods, d)
16 failing to provide accurate, legally compliant itemized wage statements, e) failing to pay premium
17 pay when such meal and rest periods were not provided; f) failing to timely pay wages during
18 employment and at the time of separation; and g) failing to reimburse expenses.

19 5. Such actions and policies, as described above and further herein, were and
20 continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all
21 members of the Aggrieved Group, brings this action pursuant to the California Labor Code,
22 including sections 201, 202, 203, 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 246, 510,
23 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, 2698 *et seq.*, applicable IWC
24 California Wage Orders and California Code of Regulations, Title 8, section 11000, *et seq.*
25 Plaintiff seeks all penalties and sums available under Labor Code section 2698 *et seq.*, attorney's
26 fees, and costs.

27
28 ¹ Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180
days are tolled from April 6, 2020 until October 1, 2020. (Emergency Rule 9(a).)

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1 to do business throughout the state. Panda Express, Inc.'s headquarters are located at 1683
2 Walnut Grove Avenue, Rosemead, California 91770.

3 12. Panda Restaurant Group, Inc. is a California corporation in good standing that is
4 authorized to do business throughout the state. Panda Restaurant Group, Inc.'s headquarters are
5 located at 1683 Walnut Grove Avenue, Rosemead, California 91770.

6 13. Panda Express, LLC is a California limited liability company that is currently FTB
7 suspended. Panda Express, LLC's headquarters are located at 1683 Walnut Grove Avenue,
8 Rosemead, California 91770.

9 14. The Defendants are collectively referred to as "Panda" or "Defendants"
10 hereinafter.

11 15. Panda operates numerous restaurants in California from numerous locations.

12 16. Plaintiff Saul Perez is and during the liability period has been, a resident of
13 California.

14 17. Plaintiff was employed by Defendants during the liability period as a non-exempt
15 employee, including as a cook in Encinitas, California.

16 18. Plaintiff is an Aggrieved Employee as he suffered at least one of the violations set
17 forth herein within the relevant period.²

18 19. Plaintiff and the members of the putative Aggrieved Group were employed by
19 Defendants as non-exempt restaurant employees, however titled, (the "Aggrieved Employees" or
20 "Non-Exempt Employees") during the relevant period.

21 20. Whenever in this complaint reference is made to any act, deed, or conduct of
22 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
23 through one or more of Defendants' officers, directors, agents, employees, or representatives,
24 who was actively engaged in the management, direction, control, or transaction of the ordinary
25 business and affairs of Defendants.

26 21. The true names and capacities of Defendants, whether individual, corporate,
27

28 ² The relevant period for purposes of the PAGA action is 1 year and 65 days prior to the filing of the complaint, and
as further tolled from the period of April 6, 2020 until October 1, 2020. (Emergency Rule 9(a).)

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
3 section 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
4 and capacities of the Defendants designated hereinafter as DOES when such identities become
5 known.

6 22. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
7 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
8 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
9 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
10 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
11 of the liability of the Defendants as alleged herein.

12 23. Plaintiff is further informed and believes, and thereon alleges, that at all times
13 material herein, each Defendant was completely dominated and controlled by its co-Defendants
14 and each was the alter ego of the other. Whenever and wherever reference is made in this
15 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
16 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
17 severally. Whenever and wherever reference is made to individuals who are not named as
18 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
19 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
20 their respective employments.

21 **FACTUAL ALLEGATIONS**

22 24. During the relevant time frame, Defendants compensated Plaintiff and the Non-
23 Exempt Employees based upon an hourly wage.

24 25. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
25 have been non-exempt employees within the meaning of the California Labor Code, and the
26 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
27 protections of the IWC Wage Orders and the Labor Code.

28 26. Plaintiff was employed as an hourly non-exempt cook from February 10, 2018

1 through March 2020.

2 27. Plaintiff performed customer service and cooking functions at Defendants'
3 restaurant store location in Encinitas, California.

4 28. The members of the Aggrieved Group worked as non-exempt employees for
5 Defendants at their restaurant locations throughout the state of California during the liability
6 period.

7 29. Plaintiff typically worked five (5) days a week, averaging 35-40 hours a week.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
9 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
10 of the requirements of California's wage and employment laws.

11 31. All Aggrieved Employees, including Plaintiff, are similarly situated in that they
12 were and are all subject to Defendants' uniform policies and systemic practices as specified
13 herein.

14 32. Plaintiff and the Aggrieved Employees were not properly compensated for all
15 hours worked, in part because they were y required to work off the clock.

16 33. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
17 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
18 at a rate of time and one-half (1.5) the employee's regular rate of pay per hour. Plaintiff and the
19 Aggrieved Employees also often worked in excess of twelve (12) hours in one (1) day and/or over
20 eight (8) hours on the seventh (7th) day of the workweek, but were not properly paid for such
21 time at a rate of two (2) times the employee's regular rate of pay per hour.

22 34. Defendants failed to properly calculate Plaintiff's and the Aggrieved Employees'
23 regular rate of pay because Defendants failed to include all forms of compensation in the regular
24 rate including bonuses, incentives, and other forms of non-discretionary compensation.

25 35. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
26 excess of five (5) hours without being provided a lawful, timely meal period and over ten (10)
27 hours in a day without being provided a second lawful, timely meal period as required by law.

28 36. Indeed, during the relevant time, as a consequence of Defendants' staffing and

1 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
2 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
3 compliant uninterrupted thirty (30) minute meal periods on shifts over five (5) hours and second
4 (2nd) meal periods on shifts over ten (10) hours as required by law.

5 37. On information and belief, Plaintiff and Aggrieved Employees did not waive their
6 rights to meal periods under the law.

7 38. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-
8 duty meal periods.

9 39. Despite the above-mentioned meal period violations, Defendants failed to
10 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
11 one (1) additional hour of pay at their regular rate as required by California law when meal
12 periods were not timely or lawfully provided in a compliant manner.

13 40. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
14 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
15 were entitled to receive premium wages based on their regular rate of pay under Labor Code
16 section 226.7 but were not receiving such compensation.

17 41. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
18 Employees were systematically not authorized and permitted to take one (1) net ten (10) minute
19 paid, rest period for every four (4) hours worked or major fraction thereof, which is a violation of
20 the Labor Code and IWC wage order.

21 42. Defendants maintained and enforced scheduling practices, policies, and imposed
22 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
23 paid rest periods of a net ten (10) minutes for every four (4) hours worked or major fraction
24 thereof. Such requisite rest periods were not timely authorized and permitted.

25 43. Moreover, Plaintiff and the Aggrieved Employees were also required to incur
26 necessary expenses in the discharge of their duties, but were not reimbursed for such necessary
27 expenses.

28 44. Despite the above-mentioned rest period violations, Defendants did not

1 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one (1)
2 additional hour of pay at their regular rate as required by California law, including Labor Code
3 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
4 not authorized and permitted.

5 45. Defendants also failed to provide accurate, lawful itemized wage statements to
6 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
7 addition, upon information and belief, Defendants failed to accurately and correctly provide the
8 name of the employer on wage statements, provide an accurate itemization of total hours worked,
9 all applicable rates of pay, hours worked at each pay rate, gross pay and net pay figures from the
10 Plaintiff and the Aggrieved Employees' wage statements.

11 46. In addition, upon information and belief, Plaintiff alleges that Defendants failed to
12 pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate, as Defendants
13 failed to factor all forms of compensation into the regular rate.

14 47. In addition, upon information and belief, Plaintiff alleges that Defendants failed to
15 pay vacation pay to the Aggrieved Employees at the proper rate, as Defendants failed to factor all
16 forms of compensation into the regular rate.

17 48. Defendants have also made it difficult to determine applicable rates of pay and
18 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
19 exempt Employees, including Plaintiff, during the liability period because they did not implement
20 and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-
21 provided rest and meal periods owed to employees as required for non-exempt employees by
22 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage
23 Orders.

24 49. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew that at the time of termination of employment (or within seventy-
26 two (72) hours thereof for resignations without prior notice as the case may be) they had a duty to
27 accurately compensate Plaintiff and the Aggrieved Employees for all wages owed including
28 minimum wages, straight time wages, overtime, rest period premiums, and that Defendants had

1 the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or
2 intentionally failed to do so in part because of the above-specified violations.

3 50. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
4 Wage Orders and corresponding applicable provisions of the California Code of Regulations,
5 Title 8, section 11000, *et seq.*

6 *FAILURE TO PAY MINIMUM WAGES*

7 51. Labor Code section 204 establishes the fundamental right of all employees in the
8 State of California to be paid wages, including minimum wage, straight time and overtime, in a
9 timely fashion for their work.

10 52. Labor Code section 1194(a) provides that notwithstanding any agreement to work
11 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
13 of the full amount of this minimum wage or overtime compensation, including interest thereon,
14 reasonable attorney's fees, and costs of suit.

15 53. Labor Code section 1197 provides: The minimum wage for employees fixed by
16 the commission or by any applicable state or local law, is the minimum wage to be paid to
17 employees, and the payment of a lower wage than the minimum so fixed is unlawful.

18 54. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
19 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
20 IWC Wage Order(s).

21 55. The applicable wage orders and California Labor Code sections 1197 and 1182.12
22 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
23 by state law.

24 56. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
25 been paid the legal minimum wage as required by Labor Code section 1197 may recover the
26 unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an
27 amount equal to the unpaid wages and interest accrued thereon.

28 57. During all relevant periods, the California Labor Code and wage orders required

1 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
2 for all hours worked.

3 58. The IWC Wage Orders define “hours worked” as “the time during which an
4 employee is subject to the control of an employer, and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.”

6 59. At all times relevant, Plaintiff and Aggrieved Employees consistently worked
7 hours for which they were not paid because Defendants frequently required Plaintiff and the
8 Aggrieved Employees to work off the clock.

9 60. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
10 Aggrieved Employees were working off the clock and that they should have been paid for this
11 time.

12 61. Defendant’s policy and practice of not paying all minimum wages violates
13 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
14 applicable wage order 5-2001.

15 *FAILURE TO PAY OVERTIME OWED*

16 62. During all relevant periods, Defendant required Plaintiff and the Aggrieved
17 Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of
18 forty (40) hours per workweek.

19 63. During all relevant periods, both the California Labor Code sections 1194, 1197,
20 510, 1198, and the pertinent wage order 5-2001 required that all work performed by an employee
21 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
22 excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the
23 employee’s regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is
24 required to be compensated at the rate of no less than twice the regular rate of pay for an
25 employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a
26 workweek is required to be compensated at the rate of no less than twice the regular rate of pay of
27 an employee.
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1 64. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
2 and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess
3 of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5)
4 times their regular rate of pay. Upon information and belief, Defendants also failed to properly
5 compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12)
6 hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

7 65. The IWC Wage Orders define “hours worked” as “the time during which an
8 employee is subject to the control of an employer, and includes all the time the employee is
9 suffered or permitted to work, whether or not required to do so.”

10 66. At all times relevant, Plaintiff and Aggrieved Employees consistently worked
11 hours for which they were not paid because Plaintiff and the Aggrieved Employees were required
12 to work off the clock—some of these hours were over eight (8) hours in one (1) workday or in
13 excess of forty (40) hours in a workweek and should have been paid at the overtime rate.

14 67. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
15 Aggrieved Employees were working off the clock and that they should have been paid for this
16 time.

17 68. In addition, upon information and belief, Defendants failed to incorporate all forms
18 of compensation, including without limitation bonuses and incentives, into the regular rate for
19 overtime purposes.

20 69. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees
21 earned overtime wages and such employees suffered damages as a result.

22 70. Defendants knew or should have known Plaintiffs and the Aggrieved Employees
23 were undercompensated as a result of these practices.

24 *FAILURE TO PROVIDE LAWFUL MEAL PERIODS*

25 71. Pursuant to Labor Code section 512, no employer shall employ an employee for a
26 work period of more than five (5) hours without providing a meal break of not less than thirty
27 (30) minutes in which the employee is relieved of all of his or her duties, except that when a work
28 period of not more than six (6) hours will complete the day’s work the meal period may be

1 waived by mutual consent of the employer and employee.

2 72. Similarly, pursuant to Labor Code section 512, no employer shall employ an
3 employee for a work period of more than ten (10) hours without providing a second meal break of
4 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. A
5 second (2nd) meal break may only be waived by mutual consent, and if the employee did not
6 waive his or her first meal period, and the employee's work day will not exceed twelve hours.

7 73. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved
8 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within
9 the first five (5) hours of a shift.

10 74. During the relevant time, Defendants also failed to provide Plaintiff and Aggrieved
11 Employees timely and uninterrupted second (2nd) meal periods of not less than thirty (30)
12 minutes on shifts longer than ten (10) hours.

13 75. Indeed, during the relevant time, as a consequence of Defendants' staffing and
14 scheduling practices, labor budgets, lack of coverage, work demands, and Defendants' policies
15 and practices, Plaintiff and the Aggrieved Employees were frequently not provided with legally
16 required timely meal periods.

17 76. On information and belief, Plaintiff and Aggrieved Employees did not waive their
18 rights to meal periods under the law.

19 77. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-
20 duty meal periods.

21 78. Plaintiff and the Aggrieved Employees were not paid one (1) hour of pay at their
22 regular rate for each day that a first (1st) or second (2nd) meal period was not lawfully provided.
23 Any sums paid were not properly paid at the correct rate.

24 *FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS*

25 79. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved
26 Employees' employment by Defendants, "Every employer shall authorize and permit all
27 employees to take rest periods, which insofar as practicable shall be in the middle of each work
28 period.... [The] authorized rest period time shall be based on the total hours worked daily at the

1 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof....
2 Authorized rest period time shall be counted as hours worked, for which there shall be no
3 deduction from wages.”

4 80. Labor Code section 226.7(a) prohibits an employer from requiring any employee
5 to work during any rest period mandated by an applicable order of the IWC.

6 81. Defendants were required to authorize and permit employees such as Plaintiff and
7 Aggrieved Employees to take rest periods during shifts in excess of three and one-half (3.5)
8 hours, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours
9 worked, or major fraction thereof, with no deduction from wages.

10 82. Despite said requirements of the IWC wage orders applicable to Plaintiff’s and
11 Aggrieved Group Member’s employment with Defendants, Defendants failed and refused to
12 authorize and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest
13 periods for every four (4) hours worked, or major fraction thereof.

14 83. Defendants did not pay Plaintiff one (1) additional hour of pay at his regular rate
15 of pay for each day that a rest period violation occurred. On information and belief, the other
16 members of the Aggrieved Group endured similar violations as a result of Defendants’ rest period
17 policies and practices and Defendant did not pay said Aggrieved Employees premium pay as
18 required by law.

19 84. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
20 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
21 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
22 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
23 Aggrieved Employees work(ed) work a third (3rd) rest period for shifts in excess of ten (10)
24 hours, and by their failure to provide compensation for such unprovided rest periods as alleged
25 herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the
26 applicable IWC Wage Order(s). Each failure constitutes a separate and independent violation of
27 the law.

28 *FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING EMPLOYMENT*

1 85. Labor Code section 204 requires that all wages are due and payable twice in each
2 calendar month.

3 86. The wages required by Labor Code sections 226.7, 510, 1194 and other sections
4 became due and payable to each employee in each month that he or she was not provided with a
5 meal period or rest period or paid minimum wage, straight or overtime wages to which he or she
6 was entitled.

7 87. Defendants violated Labor Code section 204 by systematically refusing to pay
8 wages due under the Labor Code.

9 88. Labor Code section 210 (a) provides that “In addition to, and entirely independent
10 and apart from, any other penalty provided in this article, every person who fails to pay the wages
11 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
12 1197.5, shall be subject to a penalty as follow:

13 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
14 employee.

15 (2) For each subsequent violation, or any willful or intentional violation, two hundred
16 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
17 unlawfully withheld.”

18 *FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION*

19 89. Labor Code sections 201 and 202 require Defendants to pay their employees all
20 wages due either at termination or within seventy-two (72) hours of separation of employment, as
21 the case may be.

22 90. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of
23 wages earned, including but not limited to minimum wages, proper overtime, and premium meal
24 and rest period compensation, but to date have not received such compensation. This failure of
25 Defendants to pay their employees all wages within 72 hours of termination is in violation of
26 Labor Code sections 201 and 202.

27 91. Section 203 of the Labor Code provides that if an employer willfully fails to
28 timely pay such wages the employer must, as a penalty, continue to pay the subject employee’s

1 wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed
2 thirty (30) days of wages.

3 92. Defendants failed to pay all wages due and waiting time penalties in violation of
4 Labor Code section 203.

5 *KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE*
6 *WAGE STATEMENT PROVISIONS*

7 93. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
8 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
9 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
10 when wages are paid by personal check or cash, an accurate itemized statement in writing
11 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
12 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
13 name of the employee and only the last four digits of his or her social security number or an
14 employee identification number other than a social security number, (8) the name and address of
15 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
16 pay period and the corresponding number of hours worked at each hourly rate by the
17 employee....".

18 94. Further, the IWC Wage Orders require in pertinent part: Every employer shall
19 keep accurate information with respect to each employee including the following: (3) Time
20 records showing when the employee begins and ends each work period. Meal periods, split shift
21 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
22 payroll period and applicable rates of pay...."

23 95. Labor Code section 1174 of the California also requires Defendants to maintain
24 and preserve, in a centralized location, among other items, records showing the names and
25 addresses of all employees employed and payroll records showing the hours worked daily by, and
26 the wages paid to, its employees. On information and belief and based thereon, Defendants have
27 knowingly and intentionally failed to comply with Labor Code section 1174, including by
28 implementing the policies and procedures and committing the violations alleged in the preceding

1 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
2 unlawful pursuant to Labor Code section 1175.

3 96. Defendants have failed to record many of the items delineated in applicable
4 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
5 1174, including by virtue of the fact that each wage statement which failed to accurately
6 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-
7 provided meal and rest periods, or which failed to include compensation for all minimum wages
8 earned or overtime hours worked, was an inaccurate wage statement.

9 97. In violation of Labor Code section 226(a) and the IWC Wage Orders, Defendants
10 failed to furnish members of the Aggrieved Group with an accurate itemized statement in writing
11 accurately reflecting all of the required information. Specifically, Defendants have also omitted
12 the name of the employee, accurate itemizations of total hours worked, applicable hourly rates,
13 net pay, and gross pay from Plaintiff and the Aggrieved Employees' wage statements. In addition,
14 Defendants have failed to provide accurate itemized wage statements as a consequence of the
15 above-specified violations. Wage statements with sick pay or vacation pay also listed incorrect
16 rates.

17 98. Moreover, upon information and belief, as a pattern and practice, in violation of
18 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
19 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
20 Statement Aggrieved Group, including but not limited to, beginning and ending of each work
21 period, meal period and split shift interval, the total daily hours worked, and the total hours
22 worked per pay period and applicable rates of pay.

23 99. Defendants conduct violates Labor Code section 226.

24 *FAILURE TO REIMBURSE NECESSARY EXPENSES*

25 100. Labor Code section 2802 requires Defendants to indemnify Plaintiff and
26 Aggrieved Employees for necessary expenditures incurred in direct consequence of the discharge
27 of his or her duties.

28 101. Plaintiff and the Aggrieved Group were required to incur expenses in the

1 performance of their assigned job duties.

2 102. Upon information and belief, the Defendants did not reimburse Plaintiff or the
3 Aggrieved Group for such expenses.

4 103. As a result of the unlawful acts of Defendants, Plaintiff and the Aggrieved
5 Employees have been deprived of unreimbursed sums in amounts to be determined at trial, and
6 are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
7 and costs, pursuant to Labor Code section 2802.

8
9 **FIRST CAUSE OF ACTION**

10 **THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.**

11 41. Plaintiff incorporate by reference and reallege each and every allegation contained
12 above, as though fully set forth herein.

13 42. Plaintiff provided timely written notice by certified mail to the Labor and
14 Workforce Development Agency ("LWDA") and Defendants of the specific violations of the
15 California Labor Code that Defendants have violated and continue to violate, including the facts
16 and theories that supported each alleged violation. A true and correct copy of Plaintiff's notice to
17 the LWDA is attached hereto as **Exhibit A. (WILL BE ATTACHED UPON EXPIRATION OF**
18 **65 DAYS)**

19 43. The LWDA did not provide notice of intention to investigate Defendants' alleged
20 violations within 65 calendar days of the notice. Labor Code section 2699.3(a)(2)A). Thus, this
21 action is timely.

22 44. Accordingly, Plaintiff has exhausted all administrative procedures required of
23 them under Labor Code §§2698, 2699 and 2699.3, and as a result, are justified as a matter of right
24 in bringing forward this cause of action.

25 45. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). He
26 brings this cause of action on his own behalf and on behalf of all persons who are or were
27 employed as non-exempt restaurant employees, however titled, by Defendants during the liability
28 period (as properly tolled by Emergency Rule 9).

1 46. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiff seeks to recover
2 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
3 violations as set forth in this Complaint.

4 47. Specifically, Plaintiff seeks penalties under Labor Code §2699, for the violations
5 set forth herein including, without limitation, the following:

- 6 a. Defendants' failure to comply with the requirement of Labor Code
7 1194, 1197, 1198, and Wage Order 5-2001 to pay at least minimum
8 wage for each hour worked and all wages earned;
- 9 b. Defendants' failure to comply with the requirement of Labor Code §
10 510, 1194, 1197, 1198, and Wage Order 5-2001 to pay all overtime
11 wages properly and accurately;
- 12 c. Defendants' failure to comply with the requirement of Labor Code
13 §216 to pay wages after demand was made by Plaintiff;
- 14 d. Defendants' failure to comply with the requirement of Labor Code
15 §§204 and 210 to pay, without condition and within the time set by
16 the applicable article, all wages (including commissions), or parts
17 thereof, which Defendants conceded to be due;
- 18 e. Defendants' failure to comply with the requirement of Labor Code
19 §225.5 to pay wages due;
- 20 f. Defendants' failure to comply with the requirement of Labor Code
21 §§201 and 202 to pay wages due to former employees;
- 22 g. Defendants' failure to comply with the requirement of Labor Code
23 §203 to pay waiting time penalties to former employees;
- 24 h. Defendants' failure to comply with the requirement of Labor Code
25 §512 and IWC Wage Order 5-2001 to provide first and second
26 thirty (30) minute uninterrupted meal breaks as required by law;

- i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7 and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required meal period that was not timely and properly provided;
- l. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- m. Defendants' failure to provide accurate compliant wage statements under Labor Code § 226; and
- n. Defendants' failure to reimburse necessary expenses in violation of Labor Code section 2802.

48. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders.

49. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee

1 and two hundred (\$200) per employee for violations in subsequent pay
2 periods.

3 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
4 Defendants are subject to a civil penalty in the amount of two hundred and
5 fifty dollars (\$250) per aggrieved employee for the initial pay period where
6 a violation occurs and one thousand dollars (\$1,000) per aggrieved
7 employee for violations in subsequent pay periods.

8 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of
10 this chapter or any provision regulating hours and days of work in any order
11 of the Industrial Welfare Commission,” including Labor Code §§ 510 and
12 512, shall be subject to a civil penalty, in addition to any other penalty
13 provided by law, of fifty dollars (\$50) for initial violations for each
14 underpaid employee for each pay period for which the employee was
15 underpaid and one hundred dollars (\$100) for each subsequent violation for
16 each underpaid employee for each pay period for which the employee was
17 underpaid.

18 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
19 Defendants are subject to a civil penalty of five hundred dollars (\$500).

20 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
21 paid to any employee a wage less than the minimum fixed by an order of
22 the commission, shall be subject to a civil penalty as follows: for any initial
23 violation that is intentionally committed, one hundred dollars (\$100) for
24 each underpaid employee for each pay period for which the employee is
25 underpaid; and for each subsequent violation of the same offense, two
26 hundred fifty dollars (\$250) for each underpaid employee for each pay
27 period for which the employee is underpaid regardless of whether the initial
28 violation was intentionally committed.

50. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code for which no other civil penalty is specifically provided.

51. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees and costs.

52. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

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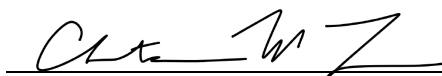
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5. For such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: March 6, 2021

JAMES R. HAWKINS, APLC



James Hawkins, Esq.

Christina Lucio, Esq.

Attorneys for Plaintiff SAUL PEREZ, on behalf of himself
and all others similarly situated