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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 23 2021

BY 
NICOLE CARTWRIGHT, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BROOKE KINNEY, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiff,

vs.

SOUTHERN PACPIZZA, LLC, a Delaware
Limited Liability Company; PACPIZZA,
LLC, a Delaware Limited Liability
Company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **CIV SB 2117956**

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff Brooke Kinney (“Plaintiff”), as an aggrieved employee and on behalf of all
2 other non-party aggrieved employees and the State of California, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”), to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other persons
7 who are or were employed by Defendants Southern PacPizza, LLC, a Delaware limited
8 liability company; PacPizza, LLC, a Delaware limited liability company; and DOES 1 through
9 10, inclusive (collectively “Defendants”) in California as non-exempt, hourly-paid employees
10 and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of
11 the Labor Code or any provision regulating hours and days of work in the applicable Industrial
12 Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint
13 (“Aggrieved Employees”), at any time between one year before Plaintiff’s submission of the
14 LWDA Notice (defined below) in advance of Plaintiff’s filing of this complaint (in addition to
15 all days the period was stayed or tolled) until judgment.

16 2. The civil penalties and other relief sought by Plaintiff exceed the minimum
17 jurisdiction limits of the Superior Court and will be established according to proof at trial.
18 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

19 3. This Court has jurisdiction over this action pursuant to the California
20 Constitution, Article VI, section 10. The statute under which this action is brought does not
21 specify any other basis for jurisdiction.

22 4. This Court has jurisdiction over all Defendants because Defendants are either
23 citizens of California, have sufficient minimum contacts in California, or otherwise
24 intentionally avail themselves of the California market so as to render the exercise of
25 jurisdiction over them by the California courts consistent with traditional notions of fair play
26 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
27 that the State of California, the real party in interest, is not a “citizen” for purposes of
28 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.

1 Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for
2 purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated
3 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
4 action. *Id.* at 1122.

5 5. Venue is proper in this Court because Defendants employ persons in this
6 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
7 and occurrences related to this action occurred in this county.

8 6. PAGA authorizes aggrieved employees to sue their current or former employers
9 as private attorneys general for various civil penalties for violations of various provisions in
10 the California Labor Code.

11 **THE PARTIES**

12 7. Plaintiff is a resident of Victorville, California. Defendants employed Plaintiff
13 from approximately February 12, 2020 until approximately August 15, 2020 as an hourly-paid
14 Delivery Driver at Defendants’ Pizza Hut restaurant located in Victorville, California.

15 8. As a non-exempt, hourly-paid employee, Plaintiff typically worked four to
16 seven hours or more per day, five to six days per week, and twenty to twenty-eight hours or
17 more per week. Plaintiff’s job duties included food deliveries, assisting co-workers at the
18 “wing street,” “cut table,” “prep” and “make table” stations, and assisting with customer
19 service, including answering phones, taking orders, and conducting sales transactions.

20 9. Plaintiff is informed and believes, and thereon alleges, that Defendant Southern
21 PacPizza, LLC, is a Delaware limited liability company that is doing business in the state of
22 California. Plaintiff is informed and believes, and thereon further alleges that at all times
23 hereinafter mentioned, Defendant Southern PacPizza, LLC is an employer whose employees
24 are engaged throughout the State of California.

25 10. Plaintiff is informed and believes, and thereon alleges, that Defendant
26 PacPizza, LLC is a Delaware limited liability company that is doing business in the state of
27 California. Plaintiff is informed and believes, and thereon further alleges that at all times
28 hereinafter mentioned, Defendant PacPizza, LLC is an employer whose employees are

engaged throughout the State of California.

11. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10 and will seek leave of this Court to amend the complaint and serve such fictitiously named defendants once their names and capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the other named Defendants, and that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

14. Plaintiff is informed and believes, and thereon alleges, that Defendants are limited liability companies, corporations and/or general partnerships that prepare and provide food to consumers across California.

15. Upon information and belief, Defendants maintain a centralized Human Resources department in California, for all Aggrieved Employees, including Plaintiff. At all relevant times, Defendants issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees, including Plaintiff and Aggrieved Employees, regardless of their location or position.

1 16. Upon information and belief, Defendants process payroll for all Aggrieved
2 Employees working for Defendants in California. Further, Defendants issue the same uniform
3 and formatted wage statements to all non-exempt, hourly-paid employees in California,
4 irrespective of their work location, position, or manner in which each employee's employment
5 ended. In other words, Defendants utilized the same methods and formulas when calculating
6 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

7 17. Defendants continue to employ non-exempt, hourly-paid employees.

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

12 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
13 Aggrieved Employees were not fully compensated because, among other reasons, all hours
14 worked may not have been recorded and because Defendants did not always pay for all hours
15 worked.

16 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
18 wages for overtime compensation and that they were not receiving overtime wages at the
19 correct overtime rate and/or for work that was required to be performed.

20 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
22 minimum wages for all hours worked. In violation of the California Labor Code and
23 applicable IWC Wage Order, Plaintiff and Aggrieved Employees were not paid at least
24 minimum wages for all work performed.

25 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
27 accordance with the Labor Code and applicable IWC Wage Order; that Plaintiff and
28 Aggrieved Employees were entitled to payment of one additional hour of pay at their regular

1 rates of compensation when they were not provided with timely, uninterrupted, thirty-minute
2 meal periods; and that Plaintiff and Aggrieved Employees were not provided with all meal
3 periods nor payment of one additional hour of pay at their regular rates of compensation when
4 they were not provided a timely, uninterrupted, thirty-minute meal period.

5 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
7 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
8 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
9 additional hour of pay at their regular rates of compensation when they were not provided
10 with a compliant rest period, and that Plaintiff and Aggrieved Employees were not provided
11 compliant rest periods nor payment of one additional hour of pay at their regular rates of
12 compensation when they were not provided a compliant rest period.

13 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete
15 and accurate wage statements in accordance with California law. In violation of the California
16 Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate
17 wage statements.

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

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

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that they had a duty to timely comply with requests from Plaintiff and
26 Aggrieved Employees to inspect or receive a copy of their employment and personnel records
27 in accordance with the Labor Code, but failed to do so.

28 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
2 of wages during their employment. In violation of the California Labor Code, Plaintiff and
3 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
4 overtime wages, minimum wages, meal period and rest period premium wages, split shift pay,
5 and reporting time pay, within permissible time periods.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
8 of all wages earned upon termination of employment. In violation of the California Labor
9 Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due,
10 including, but not limited to, overtime wages, minimum wages, meal period and rest period
11 premium wages, split shift pay, and reporting time pay within permissible time periods.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Aggrieved Employees were entitled to reimbursement
14 for all business-related expenditures and/or losses they incurred during the course and scope
15 of their employment, and that they did not receive reimbursement of applicable business-
16 related expenditures and/or losses they incurred.

17 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
19 additional hour of pay at minimum wage for working split shifts, and that Plaintiff and
20 Aggrieved Employees were not provided payment of one additional hour of pay at minimum
21 wage when they worked a split shift.

22 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that Plaintiff and Aggrieved Employees
24 are entitled to no less than two hours of pay, but not more than four hours, at the employee's
25 regular rate of pay when they are required to report for work, but are not put to work or work
26 less than half the usual or scheduled shift. Plaintiff is informed and believes, and thereon
27 alleges, that in violation of the California Labor Code and the applicable IWC Wage Order,
28 Plaintiff and Aggrieved Employees did not receive reporting time pay as required.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Aggrieved Employees were entitled to suitable seating
3 and/or were entitled to sit when it did not interfere with the performance of their duties.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with
6 written notice of the material terms of their employment with Defendants as required by the
7 California Wage Theft Prevention Act, but willfully, knowingly, and intentionally failed to do
8 so.

9 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to compensate
11 Plaintiff and Aggrieved Employees for all hours worked, and that Defendants had the
12 financial ability to pay such compensation, but failed to do so, and falsely represented to
13 Plaintiff and Aggrieved Employees that they were properly denied wages, all in order to
14 increase Defendants' profits.

15 36. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
18 violations of the California Labor Code and applicable IWC Wage Order may, as an
19 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
20 themselves and other current or former employees pursuant to procedures outlined in
21 California Labor Code section 2699.3.

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

25 38. Plaintiff and other current and former non-exempt, hourly-paid employees of
26 Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they
27 are all Defendants' current or former employees and one or more of the alleged violations
28 were committed against them.

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

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

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

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

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 Section 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice sent by the aggrieved
6 employee or representative. The employer shall give written notice
7 within that period of time by certified mail to the aggrieved employee or
8 representative and by online filing with the LWDA if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the aggrieved employee may
12 commence a civil action pursuant to Section 2699.

13 41. On or about April 16, 2021, Plaintiff provided written notice by online filing to
14 the LWDA and by Certified Mail to Defendants Southern PacPizza, LLC and PacPizza, LLC
15 of the specific provisions of the California Labor Code alleged to have been violated,
16 including facts and theories to support the alleged violations, in accordance with the
17 applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's
18 written notice to the LWDA and Defendants Southern PacPizza, LLC and PacPizza, LLC
19 dated April 16, 2021, is attached as Exhibit 1.

20 42. As of the filing of this complaint, over sixty-five days have passed since
21 Plaintiff sent the written notice described above to the LWDA, and the LWDA has not
22 responded that it intends to investigate Plaintiff's claims and Defendants have not cured the
23 violations.

24 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
26 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
27 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
28 1198.5, 2800, 2802, and 2810.5, as well as all applicable IWC Wage Orders.

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

45. 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.

46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5, as well as all applicable IWC Wage Orders.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

48. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

49. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226(c), 1182.12, 1198.5, and 2810.5.

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

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with all required overtime pay, as set forth below;

- (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and 1197.1, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7 and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain accurate payroll records, as set forth below;
- (g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (h) Violation of Labor Code sections 226(c) and 1198 for failure to provide the right to inspect or receive a copy of employment records upon request within a timely manner, as set forth below;
- (i) Violation of Labor Code sections 1198 and 1198.5 for failure to provide the right to inspect and receive a copy of the personnel records upon request within a timely manner, as set forth below;
- (j) Violation of Labor Code section 204 for failure to timely pay all earned

wages during employment, as set forth below;

- (k) Violation of Labor Code sections 201, 202, and 203 for failure to timely pay all earned wages upon termination, as set forth below;
- (l) Violations of Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for all business expenditures and/or losses necessarily incurred, as set forth below;
- (m) Violations of Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C) for failure to pay shift premiums to Plaintiff and Aggrieved Employees who worked split shifts, as set forth below;
- (n) Violation of Labor Code section 1198 and section 5 of the applicable IWC Wage Order for failing to pay reporting time payments to Plaintiff and Aggrieved Employees, as set forth more fully below;
- (o) Violation of Labor Code section 1198 and section 14 of the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and Aggrieved Employees, as set forth more fully below; and
- (p) Violations of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff and Aggrieved Employees' employment with Defendants, as set forth below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

51. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

5 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
6 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a
7 day or more than forty hours in a workweek, at the rate of time-and-one-half for all hours
8 worked in excess of eight hours in a day or more than forty hours in a workweek.

9 54. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
11 overtime compensation at a rate of twice their regular rate of pay, and required to pay Plaintiff
12 and Aggrieved Employees at a rate of two times their regular rate of pay for hours worked in
13 excess of eight hours on the seventh consecutive day of a work in a workweek.

14 55. An employee's regular rate of pay includes all remuneration for employment
15 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

16 56. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half times the regular rate of pay for hours worked in excess of eight hours in a
18 day or forty hours in a week or for the first eight hours worked on the seventh day of work,
19 and to overtime compensation at twice the employee's regular rate of pay for hours worked in
20 excess of twelve hours in a day or in excess of eight hours in a day on the seventh day of
21 work.

22 57. Defendants failed to pay all overtime wages owed to non-exempt, hourly-paid
23 Aggrieved Employees. During the relevant time period, non-exempt, hourly-paid Aggrieved
24 Employees were not paid overtime premiums for all of the hours they worked in excess of
25 eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week,
26 and/or for the seventh consecutive day of work, sometimes because all hours that they worked
27 were not recorded, and other times because they were simply not paid for all hours that were
28 recorded and/or worked. As a result, Plaintiff believes the hours non-exempt, hourly-paid

1 Aggrieved Employees worked may not have been properly recorded and/or paid, and
2 therefore, non-exempt, hourly-paid Aggrieved Employees also may not have been properly
3 compensated for all hours that were recorded and/or worked.

4 58. On information and belief, Defendants have a company-wide policy and/or
5 practice of staffing their restaurants based upon labor budgets set by the corporate office
6 and/or upper management. The labor budgets included maximum number of labor hours to be
7 used based on revenue generated by the restaurants. Defendants' use of labor budgets resulted
8 in chronic understaffing, such that there were too few employees on duty to handle the
9 workload and provide uninterrupted meal periods. As a result of Defendants' systemic
10 utilization of labor budgets and preference for profitability over compliance with labor laws,
11 Plaintiff and Aggrieved Employees were not provided adequate meal period coverage to allow
12 them to be relieved of their duties for compliant meal periods. Thus, Plaintiff and Aggrieved
13 Employees would have to continue with their duties before clocking in for the start of their
14 shifts, after clocking out for meal periods, and after clocking out at the end of their shifts. This
15 would result in Plaintiff and Aggrieved Employees working while off-the-clock during meal
16 periods and/or after their scheduled shifts for five to ten minutes or longer, on a regular basis.
17 Defendants would not always permit Plaintiff and Aggrieved Employees to adjust their clock-
18 in or clock-out times so that they could account for and be compensated for this off-the-clock
19 work.

20 59. On information and belief, Defendants have a company-wide policy and/or
21 practice of unilaterally adjusting Plaintiff's and Aggrieved Employees' time records when the
22 hours they worked exceed their scheduled shifts. Specifically, Plaintiff recalls her manager
23 adjusting her clock-in and clock-out times to reduce the total hours worked so that it mirrored
24 her work schedule. This policy and/or practice would result in Plaintiff and Aggrieved
25 Employees not being paid for all hours worked, which resulted in off-the-clock work without
26 compensation.

27 60. On information and belief, Defendants' regular rate of pay for calculating
28 overtime wages did not include all required remunerations, including non-discretionary

1 bonuses and incentive pay, or the correct calculation. Therefore, during times when Plaintiff
2 and Aggrieved Employees worked overtime and received non-discretionary bonuses and/or
3 incentive pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
4 than required by California law.

5 61. Defendants knew or should have known that, as a result of their policies,
6 practices and/or procedures, Plaintiff and Aggrieved Employees were at times performing
7 their assigned duties off-the-clock, were subject to control of Defendants, and/or were
8 suffered or permitted to perform work for which they were not paid. Defendants also knew, or
9 should have known, that they did not compensate Plaintiff and Aggrieved Employees for off-
10 the-clock work, or all hours worked. Because Plaintiff and Aggrieved Employees sometimes
11 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
12 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At
13 other times, Defendants simply did not pay for all the hours that were recorded. Therefore,
14 Plaintiff and Aggrieved Employees were not paid overtime wages for all of the overtime hours
15 they actually worked.

16 62. Defendants knew or should have known that, as a result of their policies and/or
17 practices, Plaintiff and Aggrieved Employees were performing work for which Plaintiff and
18 Aggrieved Employees were not paid. Defendants also knew, or should have known, that they
19 did not compensate Plaintiff and Aggrieved Employees for all hours worked. Because Plaintiff
20 and Aggrieved Employees sometimes worked shifts of eight hours a day or more and forty
21 hours a week or more, some of this work performed before and/or after shifts qualified for
22 overtime premium pay. Therefore, Plaintiff and Aggrieved Employees were not paid overtime
23 wages for all of the overtime hours they actually worked.

24 63. Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
25 compensation owed, as required by California law, violates the provisions of California Labor
26 Code sections 510 and 1198. Plaintiff and Aggrieved Employees are entitled to recover civil
27 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 558, 1194 and/or
28 2699(a), (f), and (g).

**FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 4**

64. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197, 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 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”).

65. As set forth above, Plaintiff is informed and believes, and thereon alleges, that Defendants’ policy and/or practice of staffing their locations based on labor budgets set by the corporate office resulted in chronic understaffing, causing a lack of meal period coverage and leading employees to perform off-the-clock work during their meal periods. Moreover, Defendants’ policy and/or practice of unilaterally adjusting employees’ clockings to reflect scheduled shifts as opposed to the actual hours worked and recorded resulted in Plaintiff and Aggrieved Employees not being paid for all hours worked. Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff and Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods.

66. Defendants systematically did not pay Plaintiff and Aggrieved Employees for all hours worked. To the extent that these unpaid hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked in violation of California Labor Code sections 223, 1182.12, 1194, 1197, and 1198. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 1194, 1197.1, and/or 2699(a), (f), and (g).

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**FAILURE TO PROVIDE AND RECORD MEAL PERIODS IN
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 11**

67. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by Defendants.

68. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

69. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. The wage order's meal period requirement is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th at 1036.

70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, and if one is not provided, pay an employee one additional hour of pay at the employee's regular rate of compensation, except that if the total hours worked is no more than twelve 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.

71. As stated above, at all relevant times Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their restaurants which resulted in a

1 lack of break coverage and prevented Plaintiff and Aggrieved Employees from taking all
2 timely, uninterrupted meal periods, including second meal periods, to which they were
3 entitled. Plaintiff and Aggrieved Employees had to work through many of their meal periods,
4 have their meal periods interrupted to return to work, and/or wait until after they had already
5 worked five hours before taking meal periods in order to adhere to this labor budget and/or
6 understaffed shifts.

7 72. Additionally, for the same reason, Defendants did not provide Plaintiff and
8 Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours
9 and who did not waive their legally-mandated meal periods by mutual consent to take a
10 second uninterrupted meal period of not less than thirty minutes.

11 73. At all times herein mentioned, Defendants knew or should have known that, as
12 a result of their practices and policies, Plaintiff and Aggrieved Employees have been required
13 to perform some of their assigned duties during meal periods and that Defendants did not pay
14 Plaintiff and Aggrieved Employees meal period premium wages when meal periods were late,
15 interrupted, and/or missed. As a result, Plaintiff and Aggrieved Employees had to work
16 through some or all of their meal periods, had their meal periods interrupted to return to work,
17 and/or waited extended periods of time before taking meal periods. Plaintiff and Aggrieved
18 Employees were made to work over five hours before Defendants permitted and authorized
19 them to take their meal periods, and their meal periods were cut short and/or taken late so that
20 Plaintiff and Aggrieved Employees could attend to their assigned tasks.

21 74. Moreover, upon information and belief, Defendants engaged in a systematic,
22 company-wide practice and/or policy of not properly training Plaintiff and Aggrieved
23 Employees on their entitlement to meal period premium payments from meal period
24 violations. As a result, Defendants failed to provide Plaintiff and Aggrieved Employees with
25 compliant meal periods in violation of California Labor Code sections 226.7 and 512(a) and
26 failed to pay the full meal period premiums due.

27 75. To the extent that Defendants did pay meal period premium wages to Plaintiff
28 and Aggrieved Employees, such payments were admissions of Defendants' failure to provide

1 meal periods. Furthermore, based upon information and belief, to the extent employees
2 received non-discretionary bonuses and/or incentive pay, those remuneration were not
3 included in Defendants’ regular rate of compensation for calculating meal period premiums
4 and resulted in an underpayment of meal period premium wages.

5 76. Defendants’ conduct violates California Labor Code sections 226.7, 512(a), and
6 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore
7 entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, as well as unpaid
8 wages, pursuant to Sections 226.7, 558 and/or 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE REST PERIODS IN**
10 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
11 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 12**

12 77. At all relevant times herein set forth, California Labor Code sections 226.7 and
13 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved
14 Employees’ employment by Defendants.

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

21 79. At all relevant times, California Labor Code section 226.7 provides that no
22 employer shall require an employee to work during any rest period mandated by an applicable
23 order of the California IWC. To comply with its obligation to provide rest periods under
24 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
25 “relinquish any control over how employees spend their break time, and relieve their
26 employees of all duties — including the obligation that an employee remain on call. A rest
27 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
28 257, 269-270 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage

Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one additional hour of pay at their regular rates of compensation for each workday that a required rest period was not provided.

80. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all uninterrupted ten-minute rest periods to which they were entitled.

81. Upon information and belief, during the relevant time period, Defendants' company-wide policy and/or practice of understaffing their restaurants resulted in a lack of break coverage, which prevented Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

82. Upon information and belief, 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 provided. Thus, Defendants denied Plaintiff and Aggrieved Employees rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

83. To the extent that Defendants did pay rest period premium wages to Plaintiff and Aggrieved Employees, such payments are admissions of Defendants' failure to provide rest periods. Furthermore, based upon information and belief, to the extent employees received non-discretionary bonuses and/or incentive pay, those remuneration were not included in Defendants' regular rate of compensation for calculating rest period premiums and resulted in an underpayment of rest period premium wages.

84. Defendants' conduct violates California Labor Code sections 226.7 and 1198 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 226.7, 2699(a), (f), and (g).

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**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

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

86. Labor Code section 226(a) requires employers to make, keep and furnish true, accurate, and complete employment records. Defendants have not provided Plaintiff and Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury.

87. Defendants have not provided Plaintiff and Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”) Rather, 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).

88. 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).

89. Defendants have provided Plaintiff and Aggrieved Employees with incomplete and inaccurate wage statements. Defendants failed to provide accurate wage statements for Plaintiff and Aggrieved Employees showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, and/or failing to state all hours worked as a result of not recording or stating all the hours that Plaintiff and Aggrieved Employees worked off-the-clock.

90. Because Defendants failed to provide, among other things, the accurate number of total hours worked, as well as gross wages earned, and net wages earned on wage statements, Plaintiff and Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether they were in fact paid correctly and the extent of underpayment, thereby causing them injury.

91. Plaintiff and Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

**FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

92. At all times relevant herein set forth, 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

1 complete records as required by section 1174(d).

2 93. During the relevant time period, and in violation of Labor Code section
3 1174(d), Defendants failed to maintain accurate payroll records for Plaintiff and Aggrieved
4 Employees showing the accurate daily hours worked and the wages paid as well as failing to
5 correctly list the gross wages and net wages earned by them.

6 94. Defendants' conduct violates California Labor Code sections 1174(d) and 1198
7 and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled
8 to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 1174.5
9 and/or 2699(a), (f), and (g).

10 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
11 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
12 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 7**

13 95. At all times relevant herein set forth, California Labor Code section 1198
14 provides that the maximum hours of work and the standard conditions of labor shall be those
15 fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
16 1198 further provides that "[t]he employment of any employees for longer hours than those
17 fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant
18 to the applicable IWC Wage Order, employers are required to keep accurate time records
19 showing when the employee begins and ends each work period and meal period. Cal. Code
20 Regs. Tit. 8, § 11050(7)(A).

21 96. During the relevant time period, Defendants failed, on a company-wide basis,
22 to keep accurate records of hours worked for Plaintiff and Aggrieved Employees, in violation
23 of Section 1198 and the applicable IWC Wage Order.

24 97. Because Defendants failed to provide, among other things, the accurate number
25 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
26 effect during the pay period and the corresponding number of hours worked on wage statements,
27 Plaintiff and Aggrieved Employees have been prevented from verifying, solely from
28 information on the wage statements themselves, that they were paid correctly and in full and

1 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
2 Aggrieved Employees have had to look to sources outside of the wage statements themselves
3 and reconstruct time records to determine whether in fact they were paid correctly and the extent
4 of underpayment.

5 98. Plaintiff and Aggrieved Employees are therefore entitled to recover penalties,
6 attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or 2699(a), (f),
7 and (g).

8 **FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN**
9 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(C), 1198.5, AND 1198**

10 99. At all relevant time herein set forth, California Labor Code section 226(b)
11 provides that every employer shall furnish current and former employees the right to inspect
12 or copy records pertaining to their employment, upon reasonable request to the employer.
13 Labor Code section 226(c) provides that an employer must comply with a request made
14 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
15 employee's request.

16 100. Additionally, Labor Code section 226(c) provides in relevant part:

17 An employer who receives a written or oral request to inspect or
18 receive a copy of records pursuant to subdivision (b) pertaining to a
19 current or former employee shall comply with the request as soon as
20 practicable, but no later than 21 calendar days from the date of the
request. A violation of this subdivision is an infraction.

21 101. Similarly, certain employment records upon the request of an employee or their
22 representative. Specifically, section 1198.5 provides in relevant part:

23 (a) Every current and former employee, or his or her representative,
24 has the right to inspect and receive a copy of the personnel records
25 that the employer maintains relating to the employee's performance
or to any grievance concerning the employee...

26 (b)(1) The employer shall make the contents of those personnel
27 records available for inspection to the current or former employee,
or his or her representative, at reasonable intervals and at reasonable
28 times, but not later than 30 calendar days from the date the employer
receives a written request...

1 (k) If an employer fails to permit a current or former employee, or
2 his or her representative, to inspect or copy personnel records within
3 the times specified in this section, or times agreed to by mutual
4 agreement as provided in this section, the current or former
employee or the Labor Commissioner may recover a penalty of
seven hundred fifty dollars (\$750) from the employer...

5 102. At all times relevant herein, California Labor Code section 226(f) states “[a]
6 failure by an employer to permit a current or former employee to inspect or copy records
7 within the time set forth in subdivision (c) entitles the current or former employee or the
8 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
9 employer.”

10 103. At all times relevant herein, California Labor Code section 226(h) states “[a]n
11 employee may also bring an action for injunctive relief to ensure compliance with this section,
12 and is entitled to an award of costs and reasonable attorney’s fees.”

13 104. During the relevant time period, Plaintiff sent Defendants reasonable written
14 requests for documents and records relating to her employment with Defendants. During the
15 relevant time period, Defendants failed to produce for inspection and copying or otherwise
16 permit inspection and copying of documents and records relating to Plaintiff’s employment.

17 105. For example, on or about August 18, 2020, Plaintiff sent a written request to
18 Defendants via First Class mail with an authorization for release of Plaintiff’s personnel file
19 and wage records. On or about December 4, 2020, Plaintiff sent a second written request to
20 Defendants via First Class mail with an authorization for release of Plaintiff’s personnel file
21 and wage records. Defendants did not produce Plaintiff’s personnel file and wage records until
22 approximately December 21, 2020 – over four months after her initial request.

23 106. Thus, over 30 days passed from the date that Plaintiff sent Defendants her
24 initial reasonable written request for documents and records relating to her employment and
25 Defendants failed to timely comply with the request in violation of Labor Code sections
26 226(c) and 1198.5.

27 107. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
28 penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 226(h)

1 and 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT IN**
3 **VIOLATION OF LABOR CODE SECTION 204**

4 108. At all times relevant herein set forth, California Labor Code section 204
5 provides that all wages earned by any person in any employment between the first and the
6 fifteenth days, inclusive, of any calendar month, other than those wages due upon termination
7 of an employee, are due and payable between the sixteenth and the twenty-sixth day of the
8 month during which the labor was performed.

9 109. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned by any person in any employment between the sixteenth and the last day, inclusive, of
11 any calendar month, other than those wages due upon termination of an employee, are due and
12 payable between the first and the tenth day of the following month.

13 110. At all times relevant herein, Labor Code section 204 provides that all wages
14 earned for labor in excess of the normal work period shall be paid no later than the payday for
15 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
16 204 provides that the requirements of this section are deemed satisfied by the payment of
17 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
18 seven calendar days following the close of the payroll period.

19 111. At all relevant times herein, Defendants failed to pay Plaintiff and Aggrieved
20 Employees all wages due including, but not limited to, overtime wages, minimum wages,
21 meal and rest period premium wages, split shift pay, and reporting time pay, within the time
22 periods specified by Labor Code section 204.

23 112. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
24 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or
25 2699(a), (f), and (g).

26 **FAILURE TO PAY WAGES UPON TERMINATION IN**
27 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201 AND 202**

28 113. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
3 her employment, his or her wages shall become due and payable not later than seventy-two
4 hours thereafter, unless the employee has given seventy-two hours previous notice of his or
5 her intention to quit, in which case the employee is entitled to his or her wages at the time of
6 quitting.

7 114. During the relevant time period, on information and belief, Defendants failed to
8 pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all their
9 earned wages at the time of discharge or within seventy-two hours of their leaving
10 Defendants' employment in violation of California Labor Code section 201-202. For example,
11 Plaintiff was terminated on or about August 15, 2020. However, Defendants did not tender
12 Plaintiff's final wages until approximately November 2020 – months after her termination.
13 Additionally, in other cases, based on information and belief, Defendants have a company-
14 wide policy and/or practice of paying departing employees their final wages on the next
15 regular pay cycle, instead of adhering to the time requirements set forth in Labor Code
16 sections 201-202.

17 115. Furthermore, on information and belief, Defendants did not pay Plaintiff and
18 Aggrieved Employees all of their earned wages, including but not limited to, overtime wages,
19 minimum wages, split shift pay, and reporting time pay, either at the time of discharge or
20 within seventy-two hours of their leaving Defendants' employment.

21 116. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no
22 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
23 within seventy-two hours of their leaving Defendants' employment, violates Labor Code
24 sections 201 and 202. Plaintiff and Aggrieved Employees are therefore entitled to recover
25 civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a),
26 (f), and (g).

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**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN
VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 9**

117. At all times herein set forth, California Labor Code sections 2800 and 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 sections 2800 and 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).

118. The applicable IWC Wage Order 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.” Cal. Code Regs. tit. 8 § 11050, subd. 9.

119. During the relevant time period, Plaintiff and Aggrieved Employees incurred necessary business-related expenses that were not fully reimbursed by Defendants, including but not limited to gas and mileage traveling to and from deliveries. Although Defendants may have had a reimbursement policy in place, Defendants did not fully reimburse Plaintiff and Aggrieved Employees for the expenses they incurred.

120. Additionally, Plaintiff and Aggrieved Employees were required to utilize their own personal cell phones to carry out their job duties. Plaintiff and Aggrieved Employees were required to use their own personal phones to communicate with co-workers and management regarding work-related matters as well as communicate with customers and using the GPS feature while delivering orders.

121. Although Defendants required Plaintiff and Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, Defendants did not reimburse them for this expense. Defendants could have provided Plaintiff and Aggrieved

1 Employees with the actual tools and materials required for use on the job, including company
2 phones and/or GPS devices, but instead, Defendants passed this operating cost off onto
3 Plaintiff and Aggrieved Employees.

4 122. Defendants' policy, practice, and/or procedure of passing its operating costs on
5 to Plaintiff and Aggrieved Employees violates Labor Code sections 2800 and 2802. Plaintiff
6 and Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs,
7 and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

8 **FAILURE TO PAY SPLIT SHIFT PREMIUMS IN**
9 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
10 **REGULATIONS TITLE 8, SECTION 11050(4)(C)**

11 123. California Labor Code section 1198 provides that no employer may employ an
12 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.

13 124. California Labor Code section 1198 further requires that ". . . the standard
14 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
15 employees. The employment of any employee . . . under conditions of labor prohibited by the
16 order is unlawful."

17 125. California Code of Regulations, Title 8, section 11050(4)(C) provides that
18 "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be
19 paid in addition to the minimum wage for that workday, except when the employee resides at
20 the place of employment." California Code of Regulations, Title 8, defines a split shift as "a
21 work schedule, which is interrupted by non-paid non-working periods established by the
22 employer, other than bona fide rest or meal periods."

23 126. Defendants violated California Labor Code section 1198 and California Code
24 of Regulations, Title 8, section 11050(4)(C), because they failed to pay Plaintiff and
25 Aggrieved Employees a split shift premium when they returned to work for an additional shift
26 in the same day, after having been clocked out for more than thirty minutes (or a period other
27 than bona fide meal or rest periods).

28 127. Defendants sometimes requested Plaintiff to work double-shifts that were

1 separated by more than one hour of time, but failed to pay her one-hour's pay at the minimum
2 wage in addition to the minimum wage for that workday. Upon information and belief, other
3 Aggrieved Employees also worked double shifts separated by more than one hour of time
4 without receiving one additional hour at minimum wage from Defendants for working a split
5 shift.

6 128. Accordingly, Defendants required Plaintiff and Aggrieved Employees to work
7 split shifts but failed to pay them an additional hour at minimum wage in violation of
8 California Labor Code section 1198.

9 129. Defendants' failure to provide Plaintiff and Aggrieved Employees with split
10 shift pay when they returned to work for an additional shift in the same day, after having been
11 clocked out for more than an hour, violates California Labor Code section 1198 and California
12 Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and Aggrieved Employees are
13 therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to
14 Sections 1194 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE REPORTING TIME PAY IN**
16 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
17 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 5**

18 130. At all times herein set forth, California Labor Code section 1198 makes it
19 illegal to employ an employee under conditions of labor that are prohibited by the applicable
20 wage order. California Labor Code section 1198 requires that "... the standard conditions of
21 labor fixed by the commission shall be the ... standard conditions of labor for employees. The
22 employment of any employee ... under conditions of labor prohibited by the order is
23 unlawful."

24 131. The applicable IWC Wage Order and California Code of Regulations, Title 8,
25 section 11050(5)(A), provides that:

26
27 Each workday an employee is required to report for work and does
28 report, but is not put to work or is furnished less than half said
employee's usual or scheduled day's work, the employee shall be
paid for half the usual or scheduled day's work, but in no event for

less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

132. Upon information and belief, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because they failed to pay Plaintiff and Aggrieved Employees reporting time pay when they reported for work and were immediately dismissed or put to work for less than half their usual or scheduled shift.

133. For instances, on some occasions, Plaintiff had reported to work based on the schedule that Defendants provided to her only to be sent home immediately or be sent home before having worked less than half of her scheduled shift because business was slow. When this occurred, Defendants did not pay Plaintiff and Aggrieved Employees for at least half of their scheduled hours. As a result, Plaintiff and Aggrieved Employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

134. Accordingly, Plaintiff and Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f), and (g) for any violations of Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

**FAILURE TO PROVIDE SEATING IN
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 14**

135. California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." The suitable seating requirement is a standard condition of labor for employees. *Bright v. 99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

136. The applicable IWC Wage Order provides that "[a]ll working employees shall

1 be provided with suitable seats when the nature of the work reasonably permits the use of
2 seats. When employees are not engaged in the active duties of their employment and the
3 nature of the work requires standing, an adequate number of suitable seats shall be placed in
4 reasonable proximity to the work area and employees shall be permitted to use such seats
5 when it does not interfere with the performance of their duties.” Cal. Code Regs. tit. 8 §
6 11050, subd. 14.

7 137. Plaintiff and Aggrieved Employees were routinely denied suitable seating
8 within the meaning of the California Labor Code. Although Plaintiff and Aggrieved
9 Employees work at the sales registers and front desks and perform tasks that reasonably
10 permit the use of seats, such as performing register transactions, greeting customers, and
11 taking orders, Defendants refuse to provide seats. On some occasions, Defendants failed to
12 provide suitable seating for workers who could have performed their duties while seated.

13 138. Defendants violated California Labor Code section 1198 and the applicable
14 IWC Wage Order because Plaintiff and Aggrieved Employees were not permitted to sit, even
15 if they were not engaged in active duties. They were not permitted to sit, even when it would
16 not interfere with the performance of their duties, nor were they provided with suitable seats.

17 139. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
18 penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
19 (g).

20 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
21 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

22 140. California’s Wage Theft Prevention Act was enacted to ensure that employers
23 provide employees with basic information material to their employment relationship at the
24 time of hiring, and to ensure that employees are given written and timely notice of any
25 changes to basic information material to their employment. Codified at California Labor Code
26 section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
27 employer must provide written notice to employees containing basic and material payroll
28 information, including, among other things, the rate(s) of pay and basis thereof, whether paid

1 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
2 overtime, the regular payday designated by the employer, and any allowances claims as part
3 of the minimum wage, including meal or lodging allowances.

4 141. Effective January 1, 2015, an employer's written notice pursuant to section
5 2810.5 must also include a statement that the employee may accrue and use sick leave; has a
6 right to request and use accrued paid sick leave; may not be terminated or retaliated against
7 for using or requesting the use of accrued paid sick leave; and has the right to file a complaint
8 against an employer who retaliates.

9 142. During the relevant time period, Defendants failed to provide written notice to
10 Plaintiff and Aggrieved Employees that lists the requisite information set forth in Labor Code
11 section 2810.5(a)(1)(A)-(C) on a company-wide basis.

12 143. Defendants' failure to provide Plaintiff and Aggrieved Employees with written
13 notice of basic information regarding their employment with Defendants is in violation of
14 Labor Code section 2810.5.

15 144. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
16 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
17 (g).

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for
22 relief and judgment against Defendants, jointly and severally, as follows:

23 1. For civil penalties and attorneys' fees and costs in excess of twenty-five
24 thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a
25 different amount.

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

27 2. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510

and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete time records); 226(c), 1198, and 1198.5 (by failing to provide employment records upon request); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 2800 and 2802 (by failing to reimburse employees for business expenses necessarily incurred); 1198 and California Code of Regulations, Title 8, section 11050(4) (by failing to pay split shift pay); 1198 and California Code of Regulations, Title 8, section 11050(5) (by failing to pay reporting time pay); 1198 and California Code of Regulations, Title 8, section 11050(14) (by failing to provide suitable seating); and 2810.5 (by failing to provide written notice of material terms of employment);

3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5, as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5, as well as all applicable IWC Wage Orders;

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

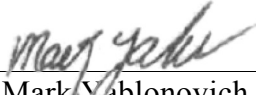
6. For such other and further relief as the Court may deem equitable and appropriate.

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Dated: June 21, 2021

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

By: 
Mark Yablonoich

Attorneys for Plaintiff Brooke Kinney

EXHIBIT 1

LAW OFFICES OF
MARK YABLONOVICH
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BEVERLY HILLS, CALIFORNIA 90212-2511
TELEPHONE: (310) 286-0246
FACSIMILE: (310) 407-5391

April 16, 2021

VIA ONLINE SUBMISSION

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

Subject: *Brooke Kinney v. Southern PacPizza, LLC, et al.*

Dear PAGA Administrator:

This law firm represents Brooke Kinney in connection with her claims under the California Labor Code against her former employer(s) Southern PacPizza, LLC and/or PacPizza, LLC dba Pizza Hut (together “PacPizza”).

The employer may be contacted directly:

SOUTHERN PACPIZZA, LLC
220 PORTER DRIVE, SUITE 100
SAN RAMON, CA 94583

PACPIZZA, LLC
220 PORTER DRIVE, SUITE 100
SAN RAMON, CA 94583

Ms. Kinney intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for PacPizza’s 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. Kinney seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PacPizza in California as non-exempt, hourly-paid employees and who received or should have 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.

PacPizza employed Ms. Kinney from approximately February 12, 2020 to approximately August 15, 2020, as an hourly-paid Delivery Driver at PacPizza’s Pizza Hut restaurant located in Victorville, California. Ms. Kinney typically worked approximately four to seven hours or more per day, five to six days per week, and twenty to twenty-eight hours or more per week. Her job duties included food deliveries, assisting co-workers at the “wing street,” “cut table,” “prep” and “make table” stations, and assisting with customer service, including answering phones, taking orders, and conducting sales transactions.

PacPizza committed one or more of the following Labor Code violations against Ms. Kinney and/or the Aggrieved Employees, the facts and theories of which follow, making her an

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“aggrieved employee” pursuant to California Labor Code section 2699(c).¹

PacPizza’s Company-Wide and Uniform Payroll and Human Resources Practices

PacPizza are Delaware corporations that own and operate numerous Pizza Hut restaurants nationwide, including in California. Upon information and belief, PacPizza maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for PacPizza in California, including Ms. Kinney and other Aggrieved Employees. At all relevant times, PacPizza issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Kinney and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, PacPizza maintains a centralized payroll department which processes payroll for all non-exempt, hourly paid employees working for PacPizza in California, including Ms. Kinney and other Aggrieved Employees. Further, PacPizza issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. PacPizza’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, PacPizza utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Kinney and other Aggrieved Employees in California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”), require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. Wage Order No. 5 further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two 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. Kinney’s experience and counsel’s review of those records currently available relating to Ms. Kinney’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations. Thus, Ms. Kinney 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.

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

PacPizza failed to pay all overtime wages owed to Ms. Kinney and other Aggrieved Employees. During the relevant time period, Ms. Kinney and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work, sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. As a result, Ms. Kinney believes the hours she and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Ms. Kinney and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

On information and belief, PacPizza has a company-wide policy and/or practice of staffing its Pizza Hut restaurants based on labor budgets set by the corporate office and/or upper management. The labor budgets included maximum number of labor hours to be used based on revenue generated by the Pizza Hut restaurants. PacPizza's use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal periods. As a result of PacPizza's systemic utilization of labor budgets and preference for profitability over compliance with labor laws, Ms. Kinney and other Aggrieved Employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. Thus, Ms. Kinney and other Aggrieved Employees would have to continue with their duties before clocking in for the start of their shifts, after clocking out for meal periods, and after clocking out at the end of their shifts. This would result in Ms. Kinney and other Aggrieved Employees working while off-the-clock before, during, and/or after their scheduled shifts for five to ten minutes or longer, on a regular basis. Pizza Hut would not always permit Ms. Kinney and other Aggrieved Employees to adjust their clock-in or clock-out times so that they could account for and be compensated for this off-the-clock work.

Moreover, on information and belief, PacPizza has a company-wide policy and/or practice of unilaterally adjusting Ms. Kinney's and other Aggrieved Employees' time records when the hours they worked exceed their scheduled shifts. Specifically, Ms. Kinney recalls her manager adjusting her clock-in and clock-out times to reduce the total hours worked so that it mirrored her work schedule. This policy and/or practice would result in Ms. Kinney and other Aggrieved Employees not being paid for all hours worked, which in essence resulted in off-the-clock work without compensation.

PacPizza knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Kinney and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of PacPizza, and/or were suffered or permitted to perform work for which they were not paid. PacPizza also knew, or should have known, that it did not compensate Ms. Kinney and other Aggrieved Employees for off-the-clock work or all hours worked. Because Ms. Kinney and other Aggrieved Employees sometimes

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worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the unrecorded work qualified for overtime premium pay. At other times, PacPizza simply did not pay for all the hours that were recorded. Therefore, Ms. Kinney and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. PacPizza's failure to pay Ms. Kinney 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 and Wage Order No. 5.

Furthermore, based upon information and belief, PacPizza's regular rate of pay for calculating overtime wages did not include all required remunerations, including non-discretionary bonuses and incentive pay, or the correct calculation. Therefore, during times when Ms. Kinney and other Aggrieved Employees worked overtime and received non-discretionary bonuses and/or incentive pay, PacPizza failed to pay all overtime wages by paying a lower overtime rate than required by California law.

Based on the foregoing, Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by 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, subd. 2(K) (defining "Hours Worked").

As set forth above, on information and belief, PacPizza's policy and/or practice of staffing their locations based on labor budgets set by the corporate office and/or upper management resulted in chronic understaffing, causing a lack of meal period coverage and leading employees to perform off-the-clock work pre-shift, post-shift and/or during their meal periods. Moreover, PacPizza's policy and/or practice of unilaterally adjusting employees' clockings to reflect scheduled shifts as opposed to the actual hours worked and recorded resulted in Ms. Kinney and other Aggrieved Employees not being paid for all hours worked.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, PacPizza did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Ms. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor

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Code sections 1194, 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11050 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and Wage Order No. 5 require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and Wage Order No. 5, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve 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. Moreover, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, No. 2:09-cv-09554, 2011 U.S. Dist. LEXIS 156685, at *11-*12 (C.D. Cal. Jan. 11, 2011).

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. Wage Order No. 5 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. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and Wage Order No. 5, 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).

As set forth above, on information and belief, PacPizza has a company-wide policy and/or practice of understaffing its Pizza Hut restaurants which resulted in a lack of break coverage and prevented Ms. Kinney and other Aggrieved Employees from taking all timely, uninterrupted meal periods, including second meal periods, to which they were entitled.

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PacPizza knew or should have known that as a result of these policies and/or practices, Ms. Kinney and other Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods and that they did not receive timely meal periods. As a result, Ms. Kinney and other Aggrieved Employees had to work through all or part of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

As with meal periods, PacPizza's company-wide staffing policy and/or practice prevented Ms. Kinney and other Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a result, Ms. Kinney and other Aggrieved Employees worked shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving uninterrupted ten-minute rest periods to which they were entitled. Ms. Kinney was not able to take rest periods due to the pressure PacPizza placed on her to meet workload demands, as well as a lack of break coverage.

PacPizza also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Kinney and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Kinney and other Aggrieved Employees were unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Ms. Kinney and other Aggrieved Employees did not receive all meal period and/or rest period premium wages owed when compliant meal periods and rest periods were not provided. To the extent that PacPizza did pay meal period and/or rest period premium wages to Ms. Kinney and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees received non-discretionary bonuses and/or incentive pay, those remuneration were not included in PacPizza's regular rate of compensation for calculating meal period and/or rest period premiums and resulted in an underpayment of meal period and/or rest period premium wages.

Accordingly, PacPizza failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No. 5. Ms. Kinney and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. PacPizza has not provided Ms. Kinney and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have

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to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”). Rather, 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).

PacPizza has provided Ms. Kinney and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, PacPizza violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Pac Pizza did not record all the hours Ms. Kinney and other Aggrieved Employees worked and/or did not pay all hours recorded, PacPizza did not list the correct amount of gross wages and net wages earned by Ms. Kinney and other Aggrieved Employees in compliance with Section 226(a)(1) and (5), respectively. PacPizza also failed to accurately list the total hours worked by Ms. Kinney and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9). Additionally, because PacPizza did not calculate Ms. Kinney’s and other Aggrieved Employees’ regular rate correctly for purposes of paying overtime and/or premium wages, it did not list the correct amount of gross wages and net wages earned by Ms. Kinney and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). PacPizza 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 compensation for meal and rest premium wages, in violation of Section 226(a)(9). Furthermore, because PacPizza failed to pay all meal period and rest period premiums to Ms. Kinney and other Aggrieved Employees, PacPizza did not list the correct amount of gross wages and net wages earned by Ms. Kinney and other Aggrieved Employees in compliance with Section 226(a)(1) and (5).

Because PacPizza failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Ms. Kinney 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 and were given confusing and/or incomplete information about their employer. Instead, Ms. Kinney 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. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest for violations of Labor Code section 226(a), pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

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Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11050 Subdivision 7

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, PacPizza willfully failed to maintain accurate payroll records for Ms. Kinney and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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 Wage Order No. 5, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, PacPizza failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Ms. Kinney and other Aggrieved Employees, in violation of Labor Code section 1174(d) and Wage Order No. 5.

Due to PacPizza’s failure to maintain accurate payroll and time records, Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226(c) and 1198.5

Labor Code section 226(c) requires “[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Similarly, Labor Code section 1198.5 requires an employer to timely produce certain employment records upon the request of an employee or their representative. Specifically, Section 1198.5 provides in relevant part:

- (a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the

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employer maintains relating to the employee's performance or to any grievance concerning the employee...

(b)(1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer...

On or about August 18, 2020, Ms. Kinney submitted a written request to PacPizza for the production of her personnel file and employment records pursuant to Sections 226(c) and 1198.5. However, PacPizza did not comply with this request. On December 4, 2020, Ms. Kinney made a second request to PacPizza and was provided her personnel file and employment records on December 21, 2020 – over four months after her initial request.

Ms. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1198.5(k) and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 204

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. 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, 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 calendar days following the close of the payroll period.

During the relevant time period, PacPizza failed to pay Ms. Kinney and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum

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wages, and/or meal and rest period premium wages, within any time period specified by Labor Code section 204.

Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 201 and 202

California Labor Code sections 201-202² 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

PacPizza failed to pay Ms. Kinney and other Aggrieved Employees who are no longer employed by PacPizza all their earned wages at the time of discharge, or within seventy-two hours of their leaving PacPizza's employment in violation of California Labor Code sections 201-202. For example, Ms. Kinney was terminated on or about August 15, 2020. However, PacPizza did not tender Ms. Kinney's final wages until approximately November 2020 – months after her termination. Additionally, in other cases, based on information and belief, PacPizza has a company-wide policy and/or practice of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201-202.

Furthermore, PacPizza did not pay Ms. Kinney and other Aggrieved Employees who are no longer employed by PacPizza all their earned wages, at the time of discharge, or within seventy-two hours of their leaving PacPizza's employ including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

As a result of PacPizza's violations of Labor Code sections 201-202, Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 2800 and 2802 and California Code of Regulations Title 8, Section 11050 Subdivision 9

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code sections 2800 and 2802 is to prevent employers from passing off their cost of doing business and

² Ms. Kinney also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). Wage Order No. 5 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." Cal. Code Regs. tit. 8 § 11050, subd. 9(B).

During the relevant time period, Ms. Kinney and other Aggrieved Employees incurred necessary business-related expenses that were not fully reimbursed by PacPizza, including but not limited to gas and mileage traveling to and from deliveries. Although PacPizza may have had a reimbursement policy in place, PacPizza did not fully reimburse Ms. Kinney and other Aggrieved Employees for the expenses they incurred.

During the relevant time period, PacPizza, on a company-wide basis, required that Ms. Kinney and other Aggrieved Employees utilize their own personal cell phones to carry out their job duties, but PacPizza failed to reimburse them for the costs of their cell phone plans and data charges. For example, Ms. Kinney was required to keep her personal cellular phone with her at all times while at work, in order to carry out her duties, including communicating with co-workers and management regarding work-related matters as well as communicating with customers and using the GPS feature while delivering orders. Although PacPizza required Ms. Kinney and other Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, PacPizza failed to reimburse its employees for this cost. PacPizza could have provided Ms. Kinney and other Aggrieved Employees with the actual tools and materials required for use on the job, including company phones, but instead, PacPizza passed this operating cost off onto Ms. Kinney and other Aggrieved Employees.

PacPizza's policy, practice and/or procedure of passing its operating costs on to Ms. Kinney and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C)

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

Wage Order No. 5 provides that "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except

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when the employee resides at the place of employment.” Cal. Code Regs. tit. 8 § 11050, subd. 4(C). A split shift is defined as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” Cal. Code Regs. tit. 8 § 11050, subd. 2(R).

PacPizza violated California Labor Code section 1198 and Wage Order No. 5 by failing to pay Ms. Kinney and other Aggrieved Employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour.

PacPizza sometimes requested Ms. Kinney to work double-shifts that were separated by more than one hour of time, but failed to pay her one-hour’s pay at the minimum wage in addition to the minimum wage for that workday. Upon information and belief, other Aggrieved Employees also worked double shifts separated by more than one hour of time without receiving one additional hour at minimum wage from PacPizza for working a split-shift.

PacPizza’s failure to provide Ms. Kinney and other Aggrieved Employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and Wage Order No. 5. Ms. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)

Pursuant to Wage Order No. 5:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.

Cal. Code Regs. tit. 8 § 11050, subd. 5(A).

Upon information and belief, PacPizza violated Labor Code section 1198 and Wage Order No. 5, because it failed to pay Ms. Kinney and other Aggrieved Employees reporting time pay when they reported to work for the scheduled shift but were put to work for less than half of the scheduled hours. For instance, Ms. Kinney has reported to work based on the schedule that PacPizza provided to her only to be sent home immediately or be sent home before having worked less than half of her scheduled shift. When this occurred, Ms. Kinney did not receive the proper reporting time pay.

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As a result of PacPizza's violation of California Labor Code section 1198 and Wage Order No. 5, Ms. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14

The suitable seating requirement set forth in the applicable IWC Wage Orders is a standard condition of labor for employees. *Bright v. 99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

Wage Order No. 5 provide that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties." Cal. Code Regs. tit. 8 § 11050, subd. 14.

Although Ms. Kinney and other Aggrieved Employees work at the sales registers and front desks and perform tasks that reasonably permit the use of seats, such as performing register transactions, greeting customers, and taking orders, PacPizza refuses to provide seats in violation of Labor Code section 1198 and Wage Order No. 5. Accordingly, Ms. Kinney and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code section 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198 and 2810.5(a)(1)

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 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, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime; any allowances claimed as part of the minimum wage, including meal or lodging allowances the regular payday designated by the employer; and the name of the employer, including any "doing business as" names used by the employer as well as the employer's physical and mailing address(es) and telephone number. 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.

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On information and belief, PacPizza failed to provide Ms. Kinney and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). On December 21, 2020, PacPizza produced Ms. Kinney's personnel file and employment records pursuant to Labor Code sections 226(c) and 1198.5. Absent from Ms. Kinney's personnel file and employment records was a Section 2810.5 notice containing all the requisite information. PacPizza's failure to provide Ms. Kinney and other Aggrieved Employees with written notice of basic information regarding their employment with PacPizza, such as the rate(s) of pay and rate(s) for overtime, is in violation of Labor Code section 2810.5. Ms. Kinney and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."³ 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." PacPizza, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Kinney's and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

* * *

Accordingly, Ms. Kinney seeks the remedies set forth above 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), and 2699.5, Ms. Kinney, 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 PacPizza for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5 and Wage Order No. 5.

Therefore, on behalf of all aggrieved employees, Ms. Kinney seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to

³ Ms. Kinney does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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PAGA.

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

Mark Yablonovich
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Beverly Hills, California 90212
(310) 286-0246
Mark@Yablonovichlaw.com

Best Regards,



Mark Yablonovich

Copy to: Southern PacPizza, LLC (via U.S. Certified Mail); PacPizza, LLC (via U.S. Certified Mail)

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511

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7014 1200 0001 5878 8482

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220 PORTER DRIVE, SUITE 100
SAN RAMON, CA 94583

B93684.07
\$7.360
US POSTAGE
FIRST-CLASS
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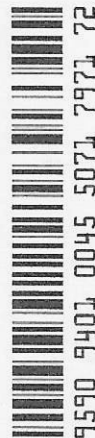
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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Southern PacPizzaz, LLC
220 Porter Drive, Suite 100
San Ramon, CA 94583



2. Article Number (Transfer from service label)

7014 1200 0001 5878 8482

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

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A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

3. Service Type

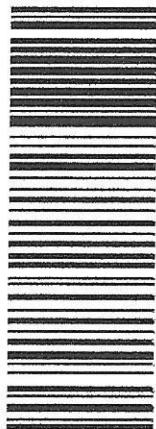
- ☐ Adult Signature
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LAW OFFICES OF

MARK YABLONOVICH

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1. Article Addressed to:

PacPizza, LLC
220 Porter Drive, Suite 100
San Ramon, CA 94583



9590 7401 0045 5071 7972 02

2. Article Number (Transfer from service label)

7015 0640 0007 1027 7948

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

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☐ Addressee

B. Received by (Printed Name)

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If YES, enter delivery address below:

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3. Service Type

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