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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

IN-N-OUT BURGERS, a California
 Corporation; and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: **21STCV31791**

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 Tayler Andrews (“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 a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 persons who are or were employed by Defendant In-N-Out Burgers, a California corporation,
8 and DOES 1 through 10, inclusive (collectively “Defendants”) in California as non-exempt,
9 hourly-paid employees and against whom one or more violations of any provision in Division
10 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in
11 the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
12 forth in this complaint (“Aggrieved Employees”), at any time between June 23, 2020 until
13 judgment. The civil penalties and other relief sought by Plaintiff exceed the minimum
14 jurisdiction limits of the Superior Court and will be established according to proof at trial.
15 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because Defendants are either
20 citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play
23 and substantial justice. There is no basis for federal diversity jurisdiction in this action given
24 that the State of California, the real party in interest, is not a “citizen” for purposes of
25 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
26 Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for
27 purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated
28 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this

1 action. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ Aggrieved
3 Employees in this county and Labor Code violations occurred throughout California,
4 including in this county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda*
5 *County*, 60 Cal.App.5th 1069, 1075 (2021) (“Venue is proper in any county in which an
6 aggrieved employee worked and Labor Code violations allegedly occurred.”)

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

10 **THE PARTIES**

11 6. Plaintiff is a resident of Ontario, California. Defendants employed Plaintiff
12 from approximately March 16, 2016, until approximately November 2, 2020, as an hourly-
13 paid associate at In-N-Out Burgers’ restaurant located in Rancho Cucamonga, California.

14 7. As a non-exempt, hourly-paid employee, Plaintiff typically worked
15 approximately four to seven hours or more per workday, five to six days per week, and up to
16 forty hours or more per week. Plaintiff’s job duties included, but were not limited to,
17 providing customer service, cleaning, taking orders, and giving customers their food. Plaintiff
18 sometimes performed some of these duties outdoors.

19 8. Defendant In-N-Out Burgers is a California corporation that is doing business
20 in the state of California. Plaintiff is informed and believes, and thereon alleges that at all
21 times hereinafter mentioned, Defendant In-N-Out Burgers is an employer whose employees
22 are engaged throughout the State of California.

23 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
24 herein under the fictitious names DOES 1 through 10 and will seek leave of this Court to
25 amend the complaint and serve such fictitiously named defendants once their names and
26 capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES
27 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the
28 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.

10. 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 harm and violations herein alleged.

11. 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

12. Plaintiff is informed and believes, and thereon alleges, that Defendants are limited liability companies, corporations and/or general partnerships that offer fast food and restaurant services to consumers in California.

13. 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.

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

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

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

5 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
6 Aggrieved Employees were not fully compensated because, among other reasons, all hours
7 worked may not have been recorded and because Defendants did not always pay for all hours
8 worked.

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

13 19. 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 at least
15 minimum wages for all hours worked. In violation of the California Labor Code and
16 applicable IWC Wage Order, Plaintiff and Aggrieved Employees were not paid at least
17 minimum wages for all work performed.

18 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
20 accordance with the Labor Code and applicable IWC Wage Order, that Plaintiff and
21 Aggrieved Employees were entitled to payment of one additional hour of pay at their regular
22 rates of compensation when they were not provided with timely, uninterrupted, control-free,
23 thirty-minute meal periods, and that Plaintiff and Aggrieved Employees were not provided
24 with all meal periods nor payment of one additional hour of pay at their regular rates of
25 compensation when they were not provided a timely, uninterrupted, control-free, thirty-minute
26 meal period.

27 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in

1 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
2 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
3 additional hour of pay at their regular rates of compensation when they were not provided
4 with a compliant rest period, and that Plaintiff and Aggrieved Employees were not provided
5 compliant rest periods nor payment of one additional hour of pay at their regular rates of
6 compensation when they were not provided a compliant rest period.

7 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and Aggrieved Employees were entitled to recovery periods
9 in accordance with the Labor Code, applicable IWC Wage Order, and the Occupational Safety
10 and Health Standards Board, and the Division of Occupational Safety and Health
11 (“Cal/OSHA”), that Defendants knew or should have known that Plaintiff and Aggrieved
12 Employees were entitled to payment of one additional hour of pay at their regular rates of
13 compensation when they were not provided with a compliant recovery period, and that
14 Plaintiff and Aggrieved Employees were not provided compliant recovery periods nor
15 payment of one additional hour of pay at their regular rates of compensation when they were
16 not provided a compliant recovery period.

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

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they had a duty to maintain accurate and complete payroll records in
24 accordance with the Labor Code and applicable IWC Wage Order, but did not do so.

25 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment
27 of wages during their employment. In violation of the California Labor Code, Plaintiff and
28 Aggrieved Employees did not receive payment of all wages, including, but not limited to,

overtime wages, minimum wages, and meal period and rest period premium wages within permissible time periods.

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

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to split shift pay. In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not receive split shift pay.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to reporting time pay. In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not receive reporting time pay.

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

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

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they had a duty to provide suitable seats when the nature of the work

1 reasonably permits the use of seats but failed to do so. Likewise, Defendants knew or should
2 have known that when Plaintiff and Aggrieved Employees were not engaged in the active
3 duties of their employment and the nature of the work has required standing, an adequate
4 number of suitable seats should have been placed in reasonable proximity to the work area and
5 should have been permitted to be used when it did not interfere with the performance of
6 duties, however Defendants have failed to provide and permit seating.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that they had a duty to provide suitable resting facilities but failed to do
9 so.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that it is in violation of the California Labor Code to require Plaintiff and
12 the Aggrieved Employees to agree to unlawful contract terms. Nevertheless, Defendants have
13 required Plaintiff and the Aggrieved Employees to agree to unlawful contract terms.

14 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that it is in violation of the California Labor Code to make, adopt, or
16 enforce any rule, regulation or policy preventing an employee from disclosing information to
17 a government or law enforcement agency if the employee has reasonable cause to believe that
18 the information discloses a violation of the law. Nevertheless, Defendants have required
19 Plaintiff and the Aggrieved Employees to comply, sign, and abide by illegal confidentiality
20 agreements, policies, guidelines, and practices.

21 35. At all times herein set forth, PAGA provides that any provision of law under
22 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
23 assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for
24 violations of the California Labor Code and applicable IWC Wage Order may, as an
25 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
26 themselves and other current or former employees pursuant to procedures outlined in
27 California Labor Code section 2699.3.

28 36. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

3 37. Plaintiff and other current and former non-exempt, hourly-paid employees of
4 Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they
5 are all Defendants’ current or former employees and one or more of the alleged violations
6 were committed against them.

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

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

26 39. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
27 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
28 provision other than those listed in Section 2699.5 after the following requirements have been

met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

40. On June 23, 2021, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendant In-N-Out Burgers of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's written notice to the LWDA and Defendant In-N-Out Burgers dated June 23, 2021, is attached as Exhibit 1.

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

42. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1102.5, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5(a) as well as all applicable IWC Wage Orders.

43. 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.

44. 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.

45. 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), 226.7, 432.5, 510, 512(a), 1102.5, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5(a) 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)

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

47. 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, 432.5, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, and 1198. 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 1182.12 and 2810.5(a)(1).

48. 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 226.7 and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with recovery periods, as set forth below;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to furnish accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;
- (g) 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;
- (h) Violations of Labor Code section 1198 and the applicable IWC Wage

- 1 Order for failure to maintain accurate time records, as set forth below;
- 2 (i) Violation of Labor Code section 204 for failure to timely pay all earned
- 3 wages during employment, as set forth below;
- 4 (j) Violation of Labor Code sections 201, 202, and 203 for failure to timely
- 5 pay all earned wages upon termination, as set forth below;
- 6 (k) Violations of Labor Code section 1198 and the applicable IWC Wage
- 7 Order for failure to provide split shift pay, as set forth below;
- 8 (l) Violations of Labor Code section 1198 and the applicable IWC Wage
- 9 Order for failure to provide reporting time pay, as set forth below;
- 10 (m) Violations of Labor Code section 1198 and the applicable IWC Wage
- 11 Order for failure to provide suitable seating, as set forth below;
- 12 (n) Violations of Labor Code section 1198 and the applicable IWC Wage
- 13 Order for failure to provide suitable resting facilities, as set forth below;
- 14 (o) Violation of Labor Code section 432.5 for requiring agreement to terms
- 15 and/or conditions prohibited by law, as set forth below;
- 16 (p) Violation of Labor Code section 1102.5 for prohibiting disclosure of a
- 17 violation of statute, rule, or regulation, as set forth below; and
- 18 (q) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
- 19 provide written notice of information material to Plaintiff's and
- 20 Aggrieved Employees' employment with Defendants, as set forth more
- 21 fully below.

22 **FAILURE TO PAY OVERTIME WAGES IN**

23 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND**

24 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

25 49. Labor Code section 1198 makes it illegal to employ an employee under

26 conditions of labor that are prohibited by the applicable wage order. California Labor Code

27 section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall

28 be the . . . standard conditions of labor for employees. The employment of any employee . . .

1 under conditions of labor prohibited by the order is unlawful.”

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

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

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

15 53. An employee’s regular rate of pay includes all remuneration for employment
16 paid to, or on behalf of, the employee.

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

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

1 that were recorded and/or worked. Plaintiff and Aggrieved Employees have been subject to
2 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
3 periods resulting in unpaid overtime. As a result, Plaintiff believes the hours she and other
4 Aggrieved Employees worked have not been properly recorded and/or paid, and therefore,
5 Plaintiff and other Aggrieved Employees have not been properly compensated for all hours
6 that were recorded and/or worked.

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

18 57. Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime
19 compensation owed, as required by California law, violates the provisions of California Labor
20 Code sections 510, 1198, and the applicable wage order. Plaintiff and Aggrieved Employees
21 are entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Labor
22 Code sections 558, 1194 and/or 2699(a), (f), and (g).

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**FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1, AND
1198 AND CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050**

SUBD. 4

58. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time 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”).

59. During the relevant time period, Plaintiff and Aggrieved Employees worked throughout the day including time spent working through meal periods and/or any other time in the day when the employees were performing work tasks subject to the control of Defendants and/or otherwise had work duties to perform. Plaintiff and Aggrieved Employees have been subjected to Defendants’ control pre-shift, post-shift, and throughout the workday, even during unpaid periods. For example, Defendants have forced Plaintiff and Aggrieved Employees to submit to wellness protocols as well as sanitization protocols before clocking-in pre-shift. Additionally, Defendants have required Plaintiff and Aggrieved Employees to complete sanitization procedures during their unpaid meal periods. Furthermore, Defendants’ policies, practices and/or procedures have commanded Plaintiff and Aggrieved Employees to complete closing procedures post-shift after clocking-out.

60. Defendants systematically have not paid Plaintiff and Aggrieved Employees 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, 1197.1, and 1198. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1194, 1197.1, and/or

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

**FAILURE TO PROVIDE 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**

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

62. 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 an uninterrupted duty-free and control-free 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).

63. 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.

64. 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.

65. At all relevant times Defendants have failed to provide meal periods to Plaintiff and Aggrieved Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and Aggrieved Employees with full 30-minute meal periods for each day worked where they are free from Defendants' required duties and control. For example, Defendants' sanitation protocols and wellness protocols limit Plaintiff's and other Aggrieved Employees' meal period times. Defendants have subjected Plaintiff and Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted meal periods. Defendants encourage employees to stay working and/or under employer control, as opposed to encouraging the rest and nourishment meal periods are designed to provide.

66. Defendants knew or should have known that as a result of companywide policies and/or practices, Plaintiff and Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and that they did not receive timely meal periods. As a result, Plaintiff and 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.

67. Defendants also engaged in a systematic, company-wide policy and/or practice of not properly training Plaintiff and Aggrieved Employees on their entitlement to meal period premium payments resulting from meal period violations. Plaintiff and Aggrieved Employees were unaware of when meal period premiums were owed to them. Based upon information and belief, Plaintiff and other Aggrieved Employees did not receive all meal period premium wages owed when compliant meal periods were not provided. To the extent that Defendants did pay meal period premium wages to Plaintiff and Aggrieved Employees, such payments were admissions of Defendants' failure to provide compliant meal periods.

68. Additionally, for the same reason, Defendants did not provide Plaintiff and Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours and who did not waive their legally mandated meal periods by mutual consent to take a

1 second uninterrupted meal period of not less than thirty minutes.

2 69. Defendants' conduct violates California Labor Code sections 226.7, 512(a), and
3 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore
4 entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to Sections
5 226.7, 558 and/or 2699(a), (f), and (g).

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

9 70. At all relevant times herein set forth, California Labor Code sections 226.7 and
10 1198, and the IWC Wage Order were applicable to Plaintiff and Aggrieved Employees'
11 employment by Defendants.

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

18 72. At all relevant times, California Labor Code section 226.7 provides that no
19 employer shall require an employee to work during any rest period mandated by an applicable
20 order of the California IWC. To comply with its obligation to provide rest periods under
21 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
22 "relinquish any control over how employees spend their break time, and relieve their
23 employees of all duties — including the obligation that an employee remain on call. A rest
24 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
25 257, 269-270 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage
26 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
27 additional hour of pay at their regular rates of compensation for each workday that a required
28 rest period was not provided.

1 73. Plaintiff and Aggrieved Employees frequently worked shifts in excess of three
2 and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all
3 uninterrupted net ten-minute rest periods to which they were entitled. For instance, on
4 information and belief, Plaintiff and Aggrieved Employees were not able to take rest periods
5 due to the pressure Defendants placed on them to meet workload demands, as well as a lack of
6 break coverage.

7 74. During the relevant time period, Defendants have failed to authorize and permit
8 rest periods. As a matter of policy and practice, Defendants have not provided Plaintiff and
9 Aggrieved Employees with net 10-minute rest periods for each day worked where they are
10 free from Defendants' required duties and control. For example, Defendants' sanitation
11 protocols and wellness protocols have limited Plaintiff's and Aggrieved Employees' rest break
12 times. Defendants have subjected Plaintiff and other Aggrieved Employees to control and
13 demanding duties throughout their workday, even during times which should constitute
14 uninterrupted rest periods. Defendants encourage employees to stay working and/or under
15 employer control, as opposed to encouraging the rest and nourishment rest periods are
16 designed to provide.

17 75. Upon information and belief, Defendants have also engaged in a systematic,
18 company-wide practice and/or policy of not paying rest period premiums owed when rest
19 periods are not provided. Thus, Defendants denied Plaintiff and Aggrieved Employees rest
20 periods and failed to pay them rest period premium wages due, in violation of Labor Code
21 section 226.7 and the applicable IWC Wage Order.

22 76. Defendants also engaged in a systematic, company-wide policy and/or practice
23 of not properly training Plaintiff and Aggrieved Employees on their entitlement to rest period
24 premium payments resulting from rest period violations. Plaintiff and Aggrieved Employees
25 were unaware of when rest period premiums were owed to them. Based upon information and
26 belief, Plaintiff and other Aggrieved Employees did not receive all rest period premium wages
27 owed when compliant rest periods were not provided. To the extent that Defendants did pay
28 rest period premium wages to Plaintiff and Aggrieved Employees, such payments were

admissions of Defendants' failure to provide compliant rest periods.

77. Defendants' conduct violates 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).

**FAILURE TO PROVIDE RECOVERY PERIODS IN
VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

78. At all relevant times herein set forth, Labor Code sections 226(a) and 1198 were applicable to Plaintiff and Aggrieved Employees' employment by Defendants.

79. At all relevant times herein set forth, Labor Code section 226.7 requires employers to provide a recovery period in compliance with an applicable statute, or applicable regulation, standard, or order of the IWC, the Occupational Safety and Health Standards Board, and the Division of Occupational Safety and Health ("Cal/OSHA"). A recovery period is "a cooldown period afforded [to] an employee to prevent heat illness." Cal. Lab. Code § 226.7(a). Pursuant to Cal/OSHA, employers must provide employees who work outdoors with access to shade as close as practicable to the areas where employees are working when the outdoor temperature exceeds 80 degrees Fahrenheit; employers must provide fresh, pure, suitably cool water to employees in sufficient quantity (one quart per employee per hour during a shift) at a location as close as practicable to the areas where employees are working; and, employers must allow and encourage employees to take preventative cool-down rest of at least 5 minutes in the shade when employees feel the need to do so to protect themselves from overheating. Cal. Code of Reg. tit. 8, § 3395.

80. During the relevant time period, Plaintiff and other Aggrieved Employees have worked outdoors interacting with customers, taking orders, and fulfilling other work-related duties when the temperature exceeds 80- and 95-degrees Fahrenheit. Defendants, on a company-wide basis, have not afforded Plaintiff and Aggrieved Employees a recovery period of no less than five minutes even though they have suffered from overheating when the temperature exceeds 80 degrees. Plaintiff and Aggrieved Employees have had a duty to

1 provide customer service and take and fulfill orders without delay and have had their recovery
2 periods interrupted by these work duties. Defendants' policies and practices encourage
3 employees to stay working and/or under Defendants' control, as opposed to encouraging the
4 rest, shade, and cool-down that recovery periods are designed to provide.

5 81. Defendants have failed to provide at least enough shade to accommodate the
6 number of employees on recovery or rest periods so that they can sit in a normal posture fully
7 in the shade without having to be in physical contact with each other. For example,
8 Defendants have not provided Plaintiff and Aggrieved Employees sufficient access to shade
9 because Defendants provide the entire crew of employees working outside on a shift a single
10 small umbrella to share between themselves that blocks little, if any, sunlight and does not
11 provide seats under the umbrella.

12 82. At all relevant times herein set forth, "shade" means blockage of direct
13 sunlight. Cal. Code of Reg. tit. 8, § 3395(b). One indicator that blockage is sufficient is when
14 objects do not cast a shadow in the area of blocked sunlight. Shade is inadequate when heat in
15 the area of shade defeats the purpose of shade, which is to allow the body to cool. The
16 umbrellas and/or coverage that Defendants have provided Plaintiff and Aggrieved Employees
17 have not afforded sufficient blockage of direct sunlight because objects cast a shadow in the
18 area of blocked sunlight provided by Defendants. Whether Defendants have been obligated to
19 make shade present or available, Plaintiff and other Aggrieved Employees have not been
20 provided sufficient shade when they work outside.

21 83. At all relevant times herein set forth, Defendants have failed to ensure that
22 effective communication by voice, observation, or electronic means is maintained so that
23 employees at the worksite can contact a supervisor when necessary. Also, Defendants have
24 not ensured effective employee observation/monitoring because Defendants have not
25 implemented a system of observation/monitoring.

26 84. At all relevant times herein set forth, Defendants have failed to maintain fresh,
27 pure, suitably cool water to Plaintiff and Aggrieved Employees in sufficient quantity at a
28 location as close as practicable to the areas where employees are working. While Defendants

1 have provided water inside company restaurants for employees, this water has not been as
2 close as practicable for Plaintiff and Aggrieved Employees to consume when they work
3 outside. Given the constant flow of business, Plaintiff and Aggrieved Employees have not
4 been able to obtain water in the amount of one quart per employee per hour during a shift as
5 the water is not kept outside.

6 85. Defendants' failure to provide recovery periods, adequate shade and/or water
7 violates Labor Code sections 226.7 and 1198 and the applicable IWC Wage Order. Plaintiff
8 and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees,
9 costs, and interest, pursuant to Sections 226.7, 2699(a), (f), and (g).

10 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS IN**
11 **VIOLATION OF LABOR CODE SECTIONS 226(a) AND 1198**

12 86. At all relevant times herein set forth, Labor Code sections 226(a) and 1198, and
13 the IWC Wage Order were applicable to Plaintiff and Aggrieved Employees' employment by
14 Defendants.

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

20 88. Labor Code section 226(a) requires employers to make, keep and furnish true,
21 accurate, and complete employment records. Defendants have not provided Plaintiff and other
22 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
23 employee may seek civil penalties under Labor Code section 2699 for violations of wage
24 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
25 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation
26 of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional'
27 requirements of section 226(e)(1).") Rather, Labor Code section 226.3 provides that any
28 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. During the relevant time period, Defendants have furnished Plaintiff and Aggrieved Employees with incomplete and inaccurate wage statements. Defendants have 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. During the relevant time period, because Defendants failed to pay all meal period and rest period premiums to Plaintiff and Aggrieved Employees, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Aggrieved Employees in compliance with Sections 226(a)(1) and (5).

91. Because Defendants 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, 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 and were given confusing and/or incomplete information about their employer. Instead, Plaintiff and 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.

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

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

93. At all relevant times herein set forth, Labor Code sections 1174(d), 1198, and the IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by Defendants.

94. At all times relevant herein set forth, 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).

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

96. Defendants' conduct violates Labor Code sections 1174(d) 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 1174.5 and/or 2699(a), (f), and (g).

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

97. At all times relevant herein set forth, Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor

Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, split shift intervals, and total daily hours. Cal. Code Regs. Tit. 8, § 11050(7)(A).

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

99. Because Defendants failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Plaintiff 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, Plaintiff 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.

100. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

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

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

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

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

104. At all relevant times herein, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum wages, split shift premiums, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

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

**FAILURE TO PAY WAGES UPON TERMINATION IN
VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202, AND 203**

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

107. During the relevant time period, on information and belief, Defendants failed to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all their

1 earned wages at the time of discharge or within seventy-two hours of their leaving
2 Defendants' employ, including but not limited to, overtime wages, minimum wages, split shift
3 premiums, reporting time pay, recovery period premiums, and/or meal period and rest period
4 premium wages, either at the time of discharge or within seventy-two hours of their leaving
5 Defendants' employment.

6 108. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no
7 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
8 within seventy-two hours of their leaving Defendants' employment, violates Labor Code
9 sections 201, 202, and 203. Plaintiff and Aggrieved Employees are therefore entitled to
10 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
11 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE SPLIT SHIFT PAY IN**
13 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
14 **REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 4(C)**

15 109. At all relevant times herein set forth, Labor Code section 1198 and the IWC
16 Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by
17 Defendants.

18 110. At all relevant times herein, pursuant to Wage Order No. 5: "Each workday an
19 employee is required to report for work and does report, but is not put to work or is furnished
20 less than half said employee's usual or scheduled day's work, the employee shall be paid for
21 half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
22 than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
23 minimum wage." Cal. Code Regs. tit. 8 § 11050, subd. 5(A).

24 111. During the relevant time period, upon information and belief, Defendants
25 violated Labor Code section 1198 and Wage Order No. 5 by failing to pay Plaintiff and
26 Aggrieved Employees split shift pay when they returned to work for an additional shift in the
27 same day, after having been clocked out for more than an hour.

28 112. Upon information and believe, Defendants requested that Plaintiff work double-

shifts (also known as split 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, Aggrieved Employees also worked double shifts separated by more than one hour of time without receiving one additional hour of pay at minimum wage from Defendants for working a split shift.

113. Defendants' failure to provide split shift pay to Plaintiff and Aggrieved Employees when they returned to work for an additional shift in the same day after having been clocked out for more than an hour violates IWC Order No. 5-2001 section 4(C) in violation of Labor Code section 1198 and Wage Order No. 5. Plaintiff and 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).

**FAILURE TO PROVIDE REPORTING TIME PAY IN
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 5(A)**

114. At all relevant times herein set forth, Labor Code section 1198 and the IWC Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by Defendants.

115. At all relevant times herein, 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).

116. During the relevant time period, upon information and belief, Defendants violated Labor Code section 1198 and Wage Order No. 5, because Defendants failed to pay Plaintiff and 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, Plaintiff has reported to work based on the schedule that Defendants provided to her only to

1 be sent home immediately or be sent home before having worked less than half of her
2 scheduled shift. When this occurred, Plaintiff did not receive the proper reporting time pay.

3 117. Defendants' failure to provide reporting time pay to Plaintiff and Aggrieved
4 Employees violates IWC Order No. 5-2001 section 5(A) in violation of Labor Code section
5 1198 and Wage Order No. 5. Plaintiff and Aggrieved Employees are therefore entitled to
6 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
7 2699(a), (f), and (g).

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

11 118. At all relevant times herein set forth, Labor Code section 1198 and the IWC
12 Wage Order were applicable to Plaintiff's and Aggrieved Employees' employment by
13 Defendants.

14 119. At all times relevant herein set forth, the suitable seating requirement set forth
15 in the applicable IWC Wage Orders is a standard condition of labor for employees. *Bright v.*
16 *99¢ Only Stores*, 189 Cal. App. 4th 1472 (2010).

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

23 121. During the relevant time period, on information and belief, although Plaintiff
24 and Aggrieved Employees work at the sales registers and outside taking orders and perform
25 tasks that reasonably permit the use of seats, such as performing register or sales transactions,
26 answering phones, greeting customers, and taking orders, Defendants have failed to provide
27 seats in violation of Labor Code section 1198 and Wage Order No. 5.

28 122. Defendants' failure to provide suitable seating to Plaintiff and Aggrieved

1 Employees violates IWC Order No. 5-2001 section 14 in violation of Labor Code section
2 1198 and Wage Order No. 5. Plaintiff and Aggrieved Employees are therefore entitled to
3 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
4 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES IN**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 13(B)**

8 123. At all times relevant herein set forth, IWC Order No. 5, section 13(B) states:
9 "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
10 shall be available to employees during work hours." The suitable resting facility requirement
11 set forth in the applicable IWC Wage Orders is a standard condition of labor for employees.

12 124. Defendants have a consistent policy and/or practice of not providing suitable
13 resting facilities to Plaintiff and Aggrieved Employees. As a resting facility, Defendants
14 provide limited, or no, seating in restaurant hallways without enough space to suffice as
15 suitable resting facilities. As an alternative to Defendants' cramped hallway spaces allotted for
16 breaks, Defendants have permitted Plaintiff and Aggrieved Employees to use restaurant dining
17 areas. However, regardless of whether employees use the hallways or the dining areas,
18 Defendants provide these resting facilities by attaching conditions which defeat the resting
19 nature these areas are supposed to afford. Plaintiff and Aggrieved Employees have not been
20 permitted to use the facilities for resting as they remain under employer control. Defendants'
21 conditions control what Plaintiff and Aggrieve Employees can/cannot do and/or how or what
22 they can eat while using Defendants' facilities. Defendants therefore have failed to provide
23 employees with suitable resting facilities.

24 125. Defendants' failure to provide Plaintiff and Aggrieved Employees with suitable
25 resting facilities violates IWC Order No. 5-2001 section 13(B) in violation of Labor Code
26 section 1198 and Wage Order No. 5. Plaintiff and Aggrieved Employees are therefore entitled
27 to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections
28 2699(a), (f), and (g).

**REQUIRING AGREEMENT TO TERMS AND/OR CONDITIONS PROHIBITED BY
LAW IN VIOLATION OF LABOR CODE SECTION 432.5**

126. At all times herein set forth, pursuant to California Civil Code section 1668, “[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.” Additionally, under California Civil Code section 3513, “[a]nyone may waive the advantage of a law intended solely for his [her/their] benefit. But a law established for a public reason cannot be contravened by a private agreement.” These statutes, among others, when violated result in a violation of Labor Code section 432.5. Under Labor Code section 432.5, “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

127. In violation of Labor Code section 432.5, Defendants have required Plaintiff and Aggrieved Employees to agree to contract terms that they know or should know are unlawful. For example, Defendants have required Plaintiff and Aggrieved Employees to agree to a contract clause purporting to waive their right to bring a representative action under PAGA and prohibiting them from pursuing PAGA claims in any forum. In *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348 (2014), the California Supreme Court held that “an employee’s right to bring a PAGA action is unwaivable” and that “an employment agreement compel[ling] the waiver of representative claims under the PAGA ... is contrary to public policy and unenforceable as a matter of state law.” *Id.* at 383-384. Where an employment agreement compels the waiver of representative claims under PAGA, such an agreement contravenes two statutes undergirding the unwaivability of statutory rights, California Civil Code sections 1668 and 3513, which are themselves derived from public policy. *Id.* at 383-384. Because the Legislature’s purpose in enacting the PAGA was to empower employees to enforce the Labor Code as agency representatives, a PAGA waiver disables that mechanism, and thus has as its “object, ... indirectly, to exempt [the employer] from responsibility for [its]

own ... violation of law....” *Id.* at 383. Such an agreement also violates Civil Code section 3513 in that “agreements requiring the waiver of PAGA rights ... harm the state’s interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations.” *Id.*

128. Defendants’ required agreement to terms and conditions prohibited by law violates Labor Code section 432.5. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

**PROHIBITING DISCLOSURE OF A VIOLATION OF STATUTE, RULE, OR
REGULATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

129. At all times herein set forth, California Labor Code section 1102.5(a) states that an employer “shall not make, adopt, or enforce any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency... if the employee has reasonable cause to believe that the information discloses a violation [of the law].”

130. On information and belief, as a condition of employment, Defendants have required Plaintiff and Aggrieved Employees to comply, sign, and abide by illegal confidentiality agreements, policies, guidelines, and practices. These illegal policies and agreements have restricted Plaintiff’s and Aggrieved Employees’ right to speak and right to whistle blow. Defendants’ agreements and policies prohibit Plaintiff and Aggrieved Employees from speaking plainly about illegal conduct. The agreements and policies prohibit Plaintiff and Aggrieved Employees from speaking to the government, attorneys, or the press about wrongdoing at In-N-Out Burgers. Specifically, except as required in the performance of their duties for Defendants, Plaintiff and Aggrieved Employees have been forced to agree, as a condition of employment, that they “shall not at any time during or after [their] employment directly or indirectly, use, disseminate, disclose or publish any Confidential Information unless required by court order.”

131. Defendants’ unlawful confidentiality policies are contrary to the Labor Code,

contrary to public policy, and contrary to the interests of the State of California. The unnecessary and inappropriate breadth of the policies are intended to control Defendants' former and current employees, infringe on constitutional rights, and prevent the disclosure and reporting of misconduct. Defendant has required Plaintiff and Aggrieved Employees to sign confidentiality agreements that define "confidential information" to mean confidential information, proprietary information, and trade secrets such as sales, products, recipes, techniques, training manuals and procedures, processes, services, sources of supply, customers, marketing strategy, merchandising strategy, pricing information, employee relationships and/or business plans, including, without limitation, information relative to research development, manufacture, supplies, purchasing, product design, business studies, plans, projections, practices and finances.

132. This claim does not concern trade secrets, consumer privacy, or information that should not be disclosed under the law (such as material non-public information under the securities laws). This claim instead concerns Defendants' use of confidentiality and other agreements and policies for illegal and improper purposes. Defendants define essentially everything as "confidential information."

133. Defendants insist that the failure to abide by the confidentiality agreement can lead to severe consequences. Plaintiff and Aggrieved Employees must agree, as a condition of their employment, that any breach may lead to disciplinary action, up to and including termination and/or legal action.

134. Defendants' requirement that employees sign illegal and overbroad confidentiality agreements violates Labor Code section 1102.5(a). Defendants' unlawful confidentiality policies and practices also prohibit disclosure of information to the government or a law enforcement agency of potential violations of the law (other than as required by court order). The agreements and policies thus violate Labor Code section 1102.5(a). These agreements and policies apply even when Plaintiff or Aggrieved Employees may and/or could have had reasonable cause to believe that the at-issue information discloses a violation of state statute, or a violation of or noncompliance with a local or state rule or regulation which is a

violation of Labor Code section 1102.5.

135. Defendants' prohibition of disclosure of a violation of statute, rule, or regulation violates Labor Code 1102.5. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1102.5(f) and/or 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 2810.5**

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

137. 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.

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

139. On information and belief, Defendants failed to provide Plaintiff and Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Defendants produced Plaintiff's personnel file and a portion of her employment

records after her November 16, 2020, request. Absent from Plaintiff's personnel file and employment records was a Section 2810.5 notice containing all the requisite information.

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the 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), 1198, and California Code of Regulations, Title 8, section 11050(11) (by failing to provide all meal periods); 226.7, 1198 and California Code of Regulations, Title 8, section 11050(12) (by failing to provide all rest periods); 1198, and California Code of Regulations, Title 8, section 11050(4)(C) (by failing to provide split shift pay); 1198, and California Code of Regulations, Title 8, section 11050(5)(A) (by failing to provide reporting time pay); 1198, and California Code of Regulations, Title 8, section 11050(14) (by failing to provide suitable seating); 226.7, 1198, and California Code of Regulations, Title 8, section 11050(13)(B) (by

1 failing to provide suitable resting facilities); 226(a) and 1198 (by failing to provide accurate
2 wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section
3 11050(7) (by failing to maintain accurate and complete payroll records); 204 (by failing
4 timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to
5 pay all earned wages upon termination); and 2810.5 (by failing timely to provide written
6 notice of material terms of employment); 432.5 (by failing to provide lawful contract terms
7 or conditions); and, 1102.5 (by failing to provide a lawful confidentiality agreement);

8 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558,
9 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
10 sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1102.5, 1174(d),
11 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 as well as all applicable IWC Wage Orders;

12 4. For attorneys' fees and costs pursuant to California Labor Code sections
13 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of
14 California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a),
15 1102.5, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 as well as all applicable
16 IWC Wage Orders;

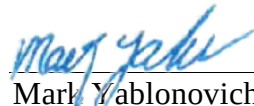
17 5. For pre-judgment and post-judgment interest as provided by law; and

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

20 Dated: August 27, 2021

Respectfully submitted,

22 LAW OFFICES OF MARK YABLONOVICH

23
24 By: 

Mark Yablono

Tony Roberts

Attorneys for Plaintiff Tayler Andrews

EXHIBIT 1

Andrews v. In-N-Out Burgers

June 23, 2021

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Tayler Andrews v. In-N-Out Burgers, a California corporation, et al.*

Dear PAGA Administrator:

This law firm represents Tayler Andrews (“Ms. Andrews”) in connection with her claims under the California Labor Code against her former employer In-N-Out Burgers, a California corporation (“In-N-Out”).

The employer may be contacted directly:

In-N-Out Burgers, a California corporation
4199 Campus Drive, 9th Floor
Irvine, California 92612

Ms. Andrews intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for In-N-Out’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. Andrews seeks relief on behalf of herself, the State of California, and other persons who are or were employed by In-N-Out 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 Labor Code section 2699.3.

In-N-Out employed Ms. Andrews from approximately March 16, 2016, to approximately November 2, 2020, as an hourly-paid associate at In-N-Out’s restaurant located in Rancho Cucamonga, California. Ms. Andrews typically worked approximately four to seven hours or more per workday, five to six days per week, and up to forty hours or more per week. Her job duties included, but were not limited to, providing customer service, cleaning, taking orders, and giving customers their food. Ms. Andrews sometimes performed some of these duties outdoors.

In-N-Out committed one or more of the following Labor Code violations against Ms. Andrews and/or the Aggrieved Employees, the facts and theories of which follow, making her an

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

In-N-Out’s Company-Wide and Uniform Payroll and Human Resources Practices

In-N-Out, a California corporation, owns and operates numerous restaurants in California, Nevada, Arizona, Utah, Texas, Colorado, and Oregon. Upon information and belief, In-N-Out maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for In-N-Out in California, including Ms. Andrews and other Aggrieved Employees. At all relevant times, In-N-Out issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Andrews and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, In-N-Out maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for In-N-Out in California, including Ms. Andrews and other Aggrieved Employees. Further, In-N-Out 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. In-N-Out’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, In-N-Out utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Andrews 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.

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

In-N-Out failed to pay all overtime wages owed to Ms. Andrews and other Aggrieved Employees. During the relevant time period, Ms. Andrews 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. Aggrieved Employees have been subject to In-N-Out's control during pre-shift and post-shift times, as well as during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation. As a result, Ms. Andrews believes the hours she and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Ms. Andrews and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

In-N-Out knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Andrews and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of In-N-Out, and/or were suffered or permitted to perform work for which they were not paid. In-N-Out also knew, or should have known, that it did not compensate Ms. Andrews and other Aggrieved Employees for off-the-clock work or all hours worked. Because Ms. Andrews and other Aggrieved Employees sometimes 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, In-N-Out simply did not pay for all the hours that were recorded. Therefore, Ms. Andrews and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. In-N-Out's failure to pay Ms. Andrews 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.

Based on the foregoing, Ms. Andrews 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").

In-N-Out has not paid for all the time Ms. Andrews and other Aggrieved Employees worked throughout the day including time spent working through meal periods and/or any other time in the day when the employees were performing work tasks subject to the control of In-N-Out and/or otherwise had work duties. Ms. Andrews and other Aggrieved Employees are subjected to In-N-Out's control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the workday. For example, In-N-Out has forced Ms. Andrews and the Aggrieved Employees to submit to wellness protocols as well as sanitization protocols before clocking-in pre-shift. Additionally, In-N-Out has required Ms. Andrews and the Aggrieved Employees to complete sanitization procedures during their unpaid meal period time. Furthermore, In-N-Out's policies, practices and/or procedures have commanded Ms. Andrews and the Aggrieved Employees to complete closing procedures post-shift after clocking-out.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, In-N-Out 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. Andrews and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor 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 duty-free and control-free 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.

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).

In-N-Out has failed to provide meal periods to Ms. Andrews and other Aggrieved Employees. As a matter of policy and practice, In-N-Out has not provided Ms. Andrews and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest breaks for each day worked where they are free from In-N-Out’s required duties and control. For example, In-N-Out’s sanitation protocols and wellness protocols limit Ms. Andrews’ and other Aggrieved Employees’ meal period and rest break times. In-N-Out has subjected Ms. Andrews and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted rest breaks and meal periods. In-N-Out encourages employees to stay working and/or under employer control, as opposed to encouraging the rest and nourishment meal periods and rest breaks are designed to provide.

In-N-Out knew or should have known that as a result of its policies and/or practices, Ms. Andrews and other Aggrieved Employees were prevented from being relieved of all duties and employer control 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. Andrews 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.

Ms. Andrews 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. Andrews was not able to take rest periods due to the pressure In-N-Out placed on her to meet workload demands, as well as a lack of break coverage.

In-N-Out also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Andrews and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Andrews 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. Andrews 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 In-N-Out did pay meal period and/or rest period premium wages to Ms. Andrews and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and

rest periods.

California Labor Code section 226.7 also requires employers to provide a recovery period in compliance with an applicable statute, or applicable regulation, standard, or order of the IWC, the Occupational Safety and Health Standards Board, and the Division of Occupational Safety and Health (“Cal/OSHA”). A recovery period is “a cooldown period afforded [to] an employee to prevent heat illness.” Cal. Lab. Code § 226.7(a). Pursuant to Cal/OSHA, employers must provide employees who work outdoors with access to shade as close as practicable to the areas where employees are working when the outdoor temperature exceeds 80 degrees Fahrenheit; employers must provide fresh, pure, suitably cool water to employees in sufficient quantity (one quart per employee per hour during a shift) at a location as close as practicable to the areas where employees are working; and, employers must allow and encourage employees to take preventative cool-down rest of at least 5 minutes in the shade when employees feel the need to do so to protect themselves from overheating. Cal. Code of Reg. tit. 8, § 3395.

Ms. Andrews and other Aggrieved Employees have worked outdoors interacting with customers, taking orders, and fulfilling other work-related duties when the temperature exceeds 80- and 95-degrees Fahrenheit. In-N-Out, on a company-wide basis, has not afforded Ms. Andrews and other Aggrieved Employees a recovery period of no less than five minutes even though they have suffered from overheating when the temperature exceeds 80 degrees. Ms. Andrews and other Aggrieved Employees have had a duty to provide customer service and take and fulfill orders without delay and have had their recovery periods interrupted by these work duties. In-N-Out’s policies and practices encourage employees to stay working and/or under In-N-Out’s control, as opposed to encouraging the rest, shade, and cool-down that recovery periods are designed to provide.

In-N-Out has failed to provide at least enough shade to accommodate the number of employees on recovery or rest periods so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other. For example, In-N-Out has not provided Ms. Andrews and other Aggrieved Employees sufficient access to shade because In-N-Out provides the entire crew of employees working outside on a shift a single small umbrella to share between themselves that blocks little, if any, sunlight and does not provide seats under the umbrella.

Moreover, “shade” means blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is inadequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. The umbrella and/or coverage that In-N-Out has provided Ms. Andrews and other Aggrieved Employees has been insufficient as objects cast a shadow in the area of blocked sunlight provided. Whether In-N-Out has been obligated to make shade present or available, Ms. Andrews and other Aggrieved Employees have not been provided sufficient shade when they work outside.

In-N-Out has also failed to ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. Also, In-N-Out has not ensured effective employee observation/monitoring because In-N-Out has not implemented a system of observation/monitoring.

In-N-Out has failed to maintain fresh, pure, suitably cool water to Ms. Andrews and other Aggrieved Employees in sufficient quantity at a location as close as practicable to the areas where employees are working. While In-N-Out has provided water inside company restaurants for employees, this water has not been as close as practicable for Ms. Andrews and other Aggrieved Employees to consume when they work outside. Given the constant flow of business, Ms. Andrews and other Aggrieved Employees have not been able to obtain water in the amount of one quart per employee per hour during a shift as the water is not kept outside.

Accordingly, In-N-Out 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. In-N-Out also failed to provide Ms. Andrews and other Aggrieved Employees with recovery periods, shade, and adequate drinking water in violation of Labor Code section 226.7 and the applicable California Code of Regulations. Ms. Andrews 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. In-N-Out has not provided Ms. Andrews 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 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).

In-N-Out has provided Ms. Andrews and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, In-N-Out violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because In-N-Out did not record all the hours Ms. Andrews and other Aggrieved Employees worked and/or pay all hours recorded, In-N-Out did not list the correct amount of gross wages and net wages earned by Ms. Andrews and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. In-N-Out also failed to accurately list the total hours worked by Ms. Andrews 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).

In addition, the total regular and overtime hours listed in In-N-Out's wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Likewise, In-N-Out provides wage statements which do not properly itemize the total hours worked because In-N-Out itemizes the incorrect total number of hours worked. Without additional information regarding the wage statement, an employee cannot simply 'arrive at the sum of hours worked.' As such, In-N-Out's wage statements do not comply with Labor Code section 226(a)(2).

In-N-Out 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 period and rest period premium wages, in violation of Section 226(a)(9). In-N-Out has knowingly and intentionally failed to properly itemize the overtime rate and hours worked. Ms. Andrews and the Aggrieved Employees cannot determine the correct pay rate promptly and easily with the corresponding hours and pay. Ms. Andrews' and other Aggrieved Employees' wage statements incorrectly show the overtime rate and incorrectly show the number of overtime hours worked at a different number of hours than worked by the employee during the pay period. If Ms. Andrews and the Aggrieved Employees add the hours listed in the line items for regular and overtime hours, the total is incorrect because it exceeds the total number hours actually worked or recorded during the pay period. As such, In-N-Out's wage statements do not comply with Labor Code section 226(a)(9) which requires itemized statements to show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The coding on In-N-Out's itemized statements cannot be said to clearly engage the employee's use of simple math to understand the rates of pay and total hours worked itemized on the wage statements.

Furthermore, because In-N-Out failed to pay all meal period and rest period premiums to Ms. Andrews and other Aggrieved Employees, In-N-Out did not list the correct amount of gross wages and net wages earned by Ms. Andrews and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5).

Because In-N-Out 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. Andrews 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. Andrews 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. Andrews 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).

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, In-N-Out willfully failed to maintain accurate payroll records for Ms. Andrews 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, as well as split shift intervals and total daily hours. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, In-N-Out failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times, split shift intervals and total daily hours for Ms. Andrews and other Aggrieved Employees, in violation of Labor Code section 1174(d) and Wage Order No. 5.

Due to In-N-Out's failure to maintain accurate payroll and time records, Ms. Andrews 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 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, In-N-Out did not pay Ms. Andrews and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, split shift premiums, and/or meal period and rest period premium wages, within any time period specified by Labor Code section 204.

Ms. Andrews 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.

In-N-Out failed to pay Ms. Andrews and other Aggrieved Employees who are no longer employed by In-N-Out all their earned wages at the time of discharge, or within seventy-two hours of their leaving In-N-Out's employment in violation of California Labor Code sections 201-202.

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

As a result of In-N-Out's violations of Labor Code sections 201-202, Ms. Andrews 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).

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

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 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).

In-N-Out violated California Labor Code section 1198 and Wage Order No. 5 by failing to pay Ms. Andrews 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.

In-N-Out sometimes requested Ms. Andrews to work double-shifts (also known as split 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 In-N-Out for working a split-shift.

In-N-Out's failure to provide Ms. Andrews 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. Andrews 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, In-N-Out violated Labor Code section 1198 and Wage Order No. 5, because it failed to pay Ms. Andrews 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. Andrews has reported to work based on the schedule that In-N-Out 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. Andrews did not receive the proper reporting time pay.

As a result of In-N-Out's violation of California Labor Code section 1198 and Wage Order No. 5, Ms. Andrews 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. Andrews and other Aggrieved Employees work at the sales registers and outside taking orders and perform tasks that reasonably permit the use of seats, such as performing register or sales transactions, answering phones, greeting customers, and taking orders, In-N-Out refuses to provide seats in violation of Labor Code section 1198 and Wage Order No. 5. Accordingly, Ms. Andrews 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 13(B)

In-N-Out has a consistent policy and/or practice of not providing suitable resting facilities. IWC Order No. 5, section 13(B) states: "[s]uitable resting facilities shall be provided in an area

separate from the toilet rooms and shall be available to employees during work hours.” The suitable resting facility requirement set forth in the applicable IWC Wage Orders is a standard condition of labor for employees.

In-N-Out has a consistent policy and/or practice of not providing suitable resting facilities to Ms. Andrews and other Aggrieved Employees. As a “breakroom,” In-N-Out provides limited, if any, seating in restaurant hallways without enough space to suffice as suitable resting facilities. As an alternative to its cramped hallway spaces allotted for breaks, In-N-Out has permitted Ms. Andrews and Aggrieved Employees to use restaurant dining areas. However, regardless of whether employees use the hallways or the dining areas, In-N-Out provides these resting facilities by attaching conditions which defeat the resting nature these areas are supposed to afford. Ms. Andrews and the Aggrieved Employees have not been permitted to use the facilities for resting as they remain under employer control. In-N-Out’s conditions control what Ms. Andrews and the Aggrieved Employees can/cannot do and/or how or what they eat while using its facilities. In-N-Out therefore has failed to provide employees with suitable resting facilities.

By failing to provide suitable resting facilities, In-N-Out willfully violated IWC Order No. 5-2001 section 13(B) in violation of Labor Code section 1198 and Wage Order No. 5. Accordingly, Ms. Andrews 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 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.

On information and belief, In-N-Out failed to provide Ms. Andrews and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). In-N-Out produced Ms. Andrews’ personnel file and a portion of her employment records after her November 16, 2021 request. Absent from Ms. Andrews’ personnel file and employment records was a Section 2810.5 notice containing all the requisite information. In-N-

Out's failure to provide Ms. Andrews and other Aggrieved Employees with written notice of basic information regarding their employment with In-N-Out, such as the rate(s) of pay and rate(s) for overtime, is in violation of Labor Code section 2810.5. Ms. Andrews 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).

Violation of California Labor Code Section 432.5

Pursuant to California Civil Code section 1668, "[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." Similarly, per California Civil Code section 3513, "[a]nyone may waive the advantage of a law intended solely for his [her/their] benefit. But a law established for a public reason cannot be contravened by a private agreement." These statutes, among others, when violated result in a violation of California Labor Code section 432.5. Under California Labor Code section 432.5, "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

In violation of California Labor Code section 432.5, In-N-Out has required Ms. Andrews and the Aggrieved Employees to agree to contract terms that it knows and should know are unlawful. For example, In-N-Out has required Ms. Andrews and the Aggrieved Employees to agree to a contract clause purporting to waive their right to bring a representative action under the PAGA and prohibiting them from pursuing PAGA claims in any forum. In *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348 (2014), the California Supreme Court held that "an employee's right to bring a PAGA action is unwaivable" and that "an employment agreement compel[ling] the waiver of representative claims under the PAGA ... is contrary to public policy and unenforceable as a matter of state law." *Id.* at 383-384. Where an employment agreement compels the waiver of representative claims under the PAGA, such an agreement contravenes two statutes undergirding the unwaivability of statutory rights, California Civil Code sections 1668 and 3513, which are themselves derived from public policy. *Id.* at 383-382. Because the Legislature's purpose in enacting the PAGA was to empower employees to enforce the Labor Code as agency representatives, a PAGA waiver disables that mechanism, and thus has as its "object, ... indirectly, to exempt [the employer] from responsibility for [its] own ... violation of law...." *Id.* at 383. Such an agreement also violates California Civil Code section 3513 in that "agreements requiring the waiver of PAGA rights ... harm the state's interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations." *Id.*

As such, In-N-Out has required Ms. Andrews and the Aggrieved Employees to agree to contract terms that it knows and should know are unlawful. Ms. Andrews 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).

Violation of California Labor Code Section 1102.5(a)

California Labor Code section 1102.5(a) states that an employer “shall not make, adopt, or enforce any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency... if the employee has reasonable cause to believe that the information discloses a violation [of the law].”

As a condition of employment, In-N-Out has required Ms. Andrews and the Aggrieved Employees to comply, sign, and abide by illegal confidentiality agreements, policies, guidelines, and practices. These illegal policies and agreements have restricted Ms. Andrews’ and the Aggrieved Employees’ right to speak and right to whistle blow. In-N-Out’s agreements and policies prohibit Ms. Andrews and the Aggrieved Employees from speaking plainly about illegal conduct. The agreements and policies prohibit Ms. Andrews and the Aggrieved Employees from speaking to the government, attorneys, or the press about wrongdoing at In-N-Out. Specifically, except as required in the performance of their duties for In-N-Out, Ms. Andrews and the Aggrieved Employees have been forced to agree, as a condition of employment, that they “shall not at any time during or after [their] employment directly or indirectly, use, disseminate, disclose or publish any Confidential Information unless required by court order.”

In-N-Out’s unlawful confidentiality policies are contrary to the California Labor Code, contrary to public policy, and contrary to the interests of the State of California. The unnecessary and inappropriate breadth of the policies are intended to control In-N-Out’s former and current employees, infringe on constitutional rights, and prevent the disclosure and reporting of misconduct. The confidentiality policies are illegal. In-N-Out has required Ms. Andrews and the Aggrieved Employees to sign confidentiality agreements that define “confidential information” to mean confidential information, proprietary information, and trade secrets such as sales, products, recipes, techniques, training manuals and procedures, processes, services, sources of supply, customers, marketing strategy, merchandising strategy, pricing information, employee relationships and/or business plans, including, without limitation, information relative to research development, manufacture, supplies, purchasing, product design, business studies, plans, projections, practices and finances.

This claim does not concern trade secrets, consumer privacy, or information that should not be disclosed under the law (such as material non-public information under the securities laws). This case instead concerns In-N-Out’s use of confidentiality and other agreements and policies for illegal and improper purposes. In-N-Out defines essentially everything as “confidential information.”

In-N-Out also makes clear that the failure to abide by its confidentiality agreement can lead to draconian results. Ms. Andrews and Aggrieved Employees must agree, as a condition of their employment, that any breach may lead to disciplinary action, up to and including termination and/or legal action.

In-N-Out's requirement that employees sign illegal confidentiality agreements violate Labor Code section 1102.5(a). In-N-Out's unlawful confidentiality policies and practices also prohibit disclosure of information to the government or a law enforcement agency of potential violations of the law (other than as required by court order). The agreements and policies thus violate Labor Code section 1102.5(a). These agreements and policies apply even when Ms. Andrews or the Aggrieved Employees have had reasonable cause to believe that the at-issue information discloses a violation of state statute, or a violation of or noncompliance with a local or state rule or regulation which is a violation of California Labor Code section 1102.5. Ms. Andrews 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." In-N-Out, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Andrews' and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f), Ms. Andrews seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Labor Code section 2699(f)(2). In the alternative to the penalties above, Ms. Andrews seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code section 558(a)(1) and 558(a)(2) should such provision be applicable.

* * *

Accordingly, Ms. Andrews 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

³ Ms. Andrews 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).

Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Andrews, 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 In-N-Out for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 432.5, 510, 512(a), 1102.5, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5 and Wage Order No. 5.

Therefore, on behalf of all Aggrieved Employees, Ms. Andrews seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

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

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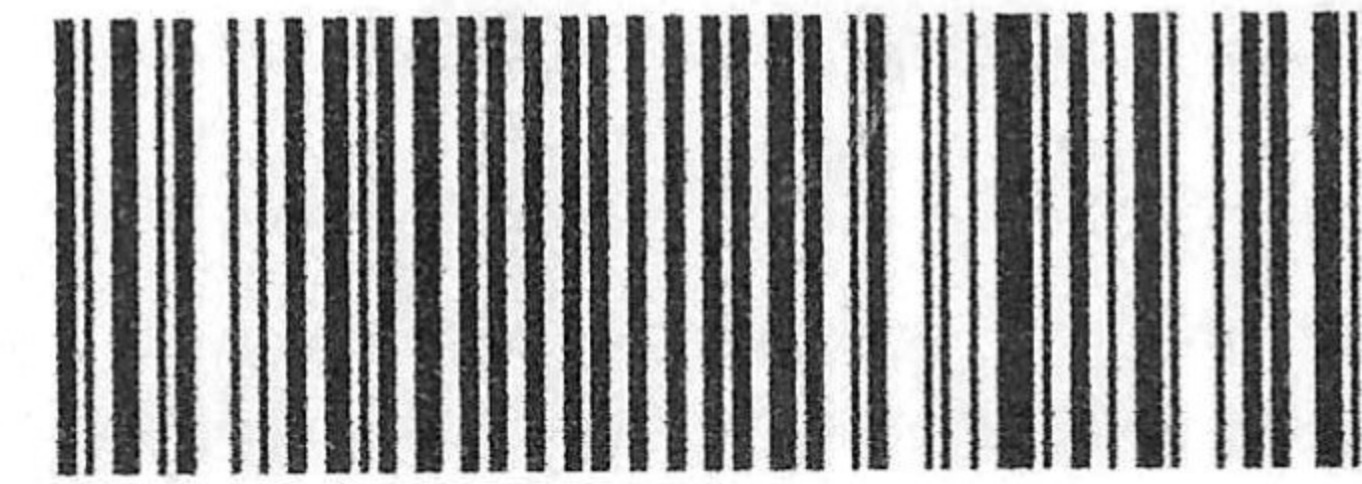
Best Regards,



Mark Yablonovich

Copy to: In-N-Out Burgers, a California corporation (via U.S. Certified Mail)
Arnold M. Wensinger
4199 Campus Drive, 9th Floor
Irvine, California 92612

LAW OFFICES OF
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4199 Campus Drive, 9th Floor
Irvine, CA 92612



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