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9 Attorneys for Plaintiff Christopher Ruiz, an aggrieved
10 employee pursuant to the Private Attorneys General Act

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County of Stanislaus
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF STANISLAUS

13 CHRISTOPHER RUIZ, as an aggrieved
14 employee pursuant to the Private Attorneys
15 General Act ("PAGA"),

16 Plaintiff,

17 vs.

18 BRONCO WINE COMPANY, a California
19 Corporation, and DOES 1 through 10,
20 inclusive,

21 Defendants.

Case No.: CV-21-005436

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

This case has been assigned to Judge Mayne, John R
Dent. 21
Department 21 for all purposes including Trial.

1 Plaintiff Christopher Ruiz (“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 section 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendant Bronco Wine Company, a California
8 Corporation, and DOES 1 through 10, inclusive (collectively “Defendants”) in California as
9 non-exempt, hourly-paid employees and against whom one or more violations of any provision
10 in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of
11 work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed,
12 as set forth in this complaint (“Aggrieved Employees”), at any time between one year before
13 Plaintiff’s submission of the LWDA Notice (defined below) in advance of Plaintiff’s filing of
14 this complaint (in addition to all days the period was stayed or tolled) until judgment. Plaintiff’s
15 pro-rata 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 intentionally
21 avail themselves of the California market so as to render the exercise of jurisdiction over them
22 by the California courts consistent with traditional notions of fair play and substantial justice.

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

28 5. PAGA authorizes aggrieved employees to sue as private attorneys general their

1 current or former employers for civil penalties for violations of various provisions in the
2 California Labor Code.

3 **THE PARTIES**

4 6. Plaintiff is a resident of Stanislaus County, California. Defendants employed
5 Plaintiff from approximately April 24, 2018 to approximately November 2, 2020, as an hourly-
6 paid Racker Blender at Defendants' plant located in Ceres, California. Plaintiff typically worked
7 eight to twelve hours or more per workday, five to seven days per week, and up to forty or more
8 hours per week. Plaintiff's job duties included, but were not limited to, facilitating wine
9 movements from tank to tank within a tank farm, cleaning tanks, moving wine from tanks,
10 checking equipment, and filling out logs and related paperwork.

11 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Bronco
12 Wine Company is a California corporation, authorized to do, and doing business in California,
13 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
14 this county and the State of California.

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

26 9. At all relevant times, Defendants, and each of them, ratified each and every act or
27 omission complained of herein. At all relevant times, Defendants, and each of them, aided and
28 abetted the acts and omissions of each and all the other Defendants in proximately causing the

1 damages and violations herein alleged.

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

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 11. Defendant Bronco Wine Company is a California corporation dedicated to
7 growing, producing, and selling wines

8 12. Plaintiff is informed and believes that Defendants are corporations engaged in
9 business across California. Upon information and belief, Defendants maintain a centralized
10 Human Resources department for all non-exempt, hourly-paid employees working for
11 Defendants in California, including Plaintiff and Aggrieved Employees. At all relevant times,
12 Defendants issued and maintained uniform, standardized practices and procedures for all non-
13 exempt, hourly-paid employees in California, including Plaintiff and Aggrieved Employees,
14 regardless of their location or position.

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

23 14. Defendants continue to employ non-exempt, hourly-paid employees in
24 California.

25 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
27 advisors knowledgeable about California labor and wage law, employment and personnel
28 practices, and about the requirements of California law.

1 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
2 Aggrieved Employees were not fully compensated because, among other reasons, all hours
3 worked may not have been recorded and because Defendants did not always pay for all hours
4 worked.

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

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 at least
11 minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff and
12 Aggrieved Employees were not paid at least minimum wages for all work 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 meal periods in
15 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to
16 payment of one additional hour of pay at their regular rates of compensation when they were not
17 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and
18 Aggrieved Employees were not provided with all meal periods nor payment of one additional
19 hour of pay at their regular rates of compensation when they did not receive a timely,
20 uninterrupted, thirty-minute meal period.

21 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
23 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
24 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
25 additional hour of pay at their regular rates of compensation when they were not provided with a
26 compliant rest period, and that Plaintiff and Aggrieved Employees were not provided compliant
27 rest periods nor payment of one additional hour of pay at their regular rates of compensation
28 when they were not provided a compliant rest period.

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

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

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

12 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of
14 wages during their employment. In violation of the California Labor Code, Plaintiff and
15 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
16 overtime wages, minimum wages, meal period and rest period premium wages,, within
17 permissible time periods.

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

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

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

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

10 29. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
12 former employees and one or more of the alleged violations were committed against them.

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

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

1 the aggrieved employee may commence a civil action pursuant to
2 California Labor Code section 2699 to recover civil penalties.

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

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

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be accompanied
13 by a filing fee of seventy-five dollars (\$75).

14 (c) The employer may cure the alleged violation within thirty-three (33)
15 calendar days of the postmark date of the notice sent by the aggrieved
16 employee or representative. The employer shall give written notice within
17 that period of time by certified mail to the aggrieved employee or
18 representative and by online filing with the LWDA if the alleged
19 violation is cured, including a description of actions taken, and no civil
20 action pursuant to Section 2699 may commence. If the alleged violation
21 is not cured within the 33-day period, the aggrieved employee may
22 commence a civil action pursuant to Section 2699.

23 32. On or about July 28, 2021, Plaintiff provided written notice by online filing to
24 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
25 Labor Code alleged to have been violated, including facts and theories to support the alleged
26 violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and
27 correct copy of Plaintiff's written notice to the LWDA and Defendants dated July 28, 2021, is
28 attached as Exhibit 1.

1 33. As of the filing of this complaint, 65 days have passed since Plaintiff sent the
2 LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends
3 to investigate Plaintiff's claims and Defendants have not cured the violations.

4 34. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
6 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204,
7 223, 226(a), 226(c), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5,
8 and 2810.5 as well as all applicable IWC Wage Orders.

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

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

15 37. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
16 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
17 general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees,
18 and the State of California against Defendants, in addition to other remedies, for violations of
19 California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226(c), 226.7, 510, 512(a), 558,
20 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2810.5 as well as all applicable IWC
21 Wage Orders.

22 **FIRST CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 39. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

1 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
2 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198 and 2810.5(a)(1). Labor Code section 2699.3(c)
3 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
4 those Labor Code sections not found in section 2699.5, including sections 226(c), 1182.12 and
5 1198.5.

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

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and
10 Aggrieved Employees with all required overtime pay, as set forth below;
- 11 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, and 1197.1,
12 and the applicable IWC Wage Order for Defendant's failure to
13 compensate Plaintiff and Aggrieved Employees with at least minimum
14 wages for all hours worked, as set forth below;
- 15 (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
17 and Aggrieved Employees with meal periods, as set forth below;
- 18 (d) Violation of Labor Code sections 226.7 and 1198, and the applicable
19 IWC Wage Order for Defendants' failure to provide Plaintiff and
20 Aggrieved Employees with rest periods, as set forth below;
- 21 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and Aggrieved Employees, as set forth below;
- 24 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain accurate payroll records, as set
26 forth below;
- 27 (g) Violations of Labor Code section 1198 and the applicable IWC Wage
28 Order for failure to maintain accurate time records, as set forth below;

- 1 (h) Violation of Labor Code section 204 for failure to timely pay all wages
2 during employment, as set forth below;
- 3 (i) Violation of Labor Code sections 201, 202, and 203, for failure to timely
4 pay all earned wages upon termination, as set forth below;
- 5 (j) Violation of California Labor Code Sections 226(d) and 1198.5 for failure
6 to provide the right to inspect and/or produce Plaintiff's employment
7 records upon request within the required time frame as set forth below;
- 8 (k) Violation of California Labor Code Section 1198 and California Code of
9 Regulations Title 8, Section 11080 Subdivision 14 and the applicable
10 IWC Wage Order for failure to provide suitable seating; and
- 11 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
12 provide written notice of information material to Plaintiff's and
13 Aggrieved Employees' employment with Defendants, as set forth more
14 fully below.

15 **FAILURE TO PAY OVERTIME WAGES IN**
16 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND**
17 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11080 SUBD. 3**

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

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

27 43. Specifically, the applicable IWC Wage Order provides that Defendants are and
28 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day

1 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in
2 excess of eight hours in a day or more than forty hours in a workweek.

3 44. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
5 overtime compensation at a rate of two times their regular rate of pay, and required to pay
6 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours
7 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

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

10 46. California Labor Code section 510 codifies the right to overtime compensation at
11 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
12 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
13 overtime compensation at twice the employee's regular rate of pay for hours worked in excess
14 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

15 47. At all relevant times, Defendants failed to pay all overtime wages owed to
16 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other
17 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
18 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
19 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
20 worked were not recorded, and other times because they were simply not paid for all hours that
21 were recorded and/or worked. As a result, Plaintiff believes the hours he and other Aggrieved
22 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
23 and other Aggrieved Employees may not have been properly compensated for all hours that
24 were recorded and/or worked.

25 48. Additionally, Plaintiff and Aggrieved Employees have been subject to
26 Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
27 periods resulting in unpaid overtime where they are not getting paid, which, when working
28 overtime eligible shifts results in underpaid overtime compensation. Based on information and

1 belief, not all recorded work hours were paid because of rounding practices and/or inaccurate
2 timekeeping policies and practices. As a result, Plaintiff believes the hours he and other
3 Aggrieved Employees worked may not have been properly recorded and/or paid, and
4 therefore, Plaintiff and other Aggrieved Employees may not have been properly compensated
5 for all hours that were recorded and/or worked.

6 49. Defendants knew or should have known that, as a result of their policies,
7 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing
8 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered
9 or permitted to perform work for which they were not paid. Defendants also knew, or should
10 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-
11 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes
12 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
13 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other
14 times, Defendants simply did not pay for all the hours that were recorded. Therefore, Plaintiff
15 and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they
16 actually worked. Defendants' failure to pay Plaintiff and other Aggrieved Employees the
17 balance of overtime compensation, as required by California law, violates the provisions of
18 California Labor Code sections 510 and 1198 and Wage Order No. 8.

19 50. Plaintiff is further informed and believes, and thereon alleges, that Defendants'
20 regular rate of pay for calculating overtime wages did not include all required remunerations,
21 including all required shift differential payments or the correct calculation. Therefore, during
22 times when Plaintiff and other Aggrieved Employees worked overtime and received shift
23 differential pay, Defendants did not pay all overtime wages by paying a lower overtime rate
24 than required by California law.

25 51. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to
26 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections
27 510 and 1198 and Wage Order No. 8, pursuant to Labor Code sections 558, 1194, and/or
28 2699(a), (f), and (g).

**FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1 AND 1198
AND CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11080 SUBD. 4**

52. 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. 8 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, § 11080(2)(G) (defining “Hours Worked”).

53. Defendants have not paid for all the time Plaintiff and Aggrieved Employees have worked throughout the day including all 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. Plaintiff and other Aggrieved Employees are subjected to Defendants’ control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the workday such as unpaid meal periods.

54. Defendants also have had a continuous policy of not paying Plaintiff and Aggrieved Employees for all hours worked throughout the day, including, but not limited to rounding, before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendants.

55. To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Defendants 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. 8. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

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**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 11080 SUBD. 11**

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

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

58. 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.*, 53 Cal. 4th at 1036.

59. 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.

60. Plaintiff is informed and believes, and thereon alleges, that Defendants prevented Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods,

1 including second meal periods, to which they were entitled. As a result of these policies and/or
2 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties
3 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved
4 Employees had to work through part or all of their meal periods, had their meal periods
5 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,
6 Defendants' policies and/or practices of communicating with employees regarding work-related
7 matters as well as directing employees to continue working and/or return to work during meal
8 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

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

15 62. Defendants have failed to provide meal periods to Plaintiff and other Aggrieved
16 Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and
17 other Aggrieved Employees with full 30-minute meal periods for each day worked where they
18 are free from Defendants' required duties and control. For example, Defendants' placement of
19 time clocks as well as its clock-in and clock-out policies and procedures for meal periods has
20 resulted in Defendants providing meal periods of less than 30 minutes for Plaintiff and
21 Aggrieved Employees. Defendants' have subjected Plaintiff and other Aggrieved Employees
22 to control and demanding duties throughout their workday, even during times which should
23 constitute uninterrupted duty-free meal periods. Defendants encourage employees to stay
24 working and/or under employer control, as opposed to encouraging the rest and nourishment
25 meal periods are designed to provide.

26 63. Defendants also engaged in a systematic, company-wide policy and/or practice of
27 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal
28 period premium payments resulting from meal period violations. As such, Plaintiff was unaware

1 of when meal period premiums were owed to him. Accordingly, Plaintiff and other Aggrieved
2 Employees did not receive all meal period premium wages owed when compliant meal periods
3 were not provided. To the extent that Defendants did pay meal period premium wages to
4 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.
5 Furthermore, based upon information and belief, to the extent employees received non-
6 discretionary remuneration, Defendants' regular rate of compensation for calculating meal
7 period premiums did not include all required remunerations or the correct calculation and
8 resulted in an underpayment of meal period premium wages. For example, to the extent
9 Plaintiff and Aggrieved Employees have been paid shift differential pay, those payments have
10 not been included in Defendants' regular rate of compensation for calculating meal period
11 premiums and has resulted in an underpayment of meal period premium wages.

12 64. Accordingly, Defendants failed to provide all meal periods and/or pay all meal
13 period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No.
14 8. Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees,
15 costs, and interest, pursuant to Labor Code sections 226.7, 512, 558, 1198, and 2699(a), (f), and
16 (g).

17 **FAILURE TO PROVIDE REST PERIODS IN**
18 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
19 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11080 SUBD. 12**

20 65. At all relevant times herein set forth, California Labor Code sections 226.7 and
21 1198, and the applicable IWC Wage Order were applicable to Plaintiff and Aggrieved
22 Employees' employment by Defendants.

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

1 67. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to provide rest periods under
4 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
5 “relinquish any control over how employees spend their break time, and relieve their employees
6 of all duties — including the obligation that an employee remain on call. A rest period, in short,
7 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270
8 (2016). Pursuant to California Labor Code section 226.7(c) and the applicable IWC Wage
9 Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
10 additional hour of pay at their regular rates of compensation for each workday that a required
11 rest period was not provided.

12 68. Moreover, upon information and belief, Defendants have also engaged in a
13 systematic, company-wide practice and/or policy of not paying rest period premiums owed
14 when rest periods are not provided. Additionally, Defendants paid rest period premiums at the
15 incorrect rates. Because Defendants did not properly calculate Plaintiff’s and Aggrieved
16 Employees’ regular rates of compensation by including all remunerations, such as
17 nondiscretionary bonuses and incentive pay, any premiums paid for rest period violations were
18 also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.
19 Thus, Defendants denied Plaintiff and Aggrieved Employees rest periods and failed to pay them
20 rest period premium wages due, in violation of Labor Code section 226.7 and the applicable
21 IWC Wage Order.

22 69. As with meal periods, Defendants’ policies and/or practices prevented Plaintiff
23 and other Aggrieved Employees from being relieved of all duties to take compliant rest periods.
24 As a result, Plaintiff and other Aggrieved Employees would frequently work shifts in excess of
25 three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving
26 all uninterrupted ten-minute rest periods to which they were entitled.

27 70. Defendants have failed to authorize and permit rest periods to Plaintiff and
28 other Aggrieved Employees. As a matter of policy and practice, Defendants have not provided

1 Plaintiff and other Aggrieved Employees with net 10-minute rest periods for each day worked
2 where they are free from Defendants' required duties and control. For example, Defendants'
3 placement of time clocks as well as clock-in and clock-out policies and procedures for rest
4 periods has resulted in Defendants providing rest periods of less than 10 minutes for Plaintiff
5 and Aggrieved Employees. Defendants' have subjected Plaintiff and other Aggrieved
6 Employees to control and demanding duties throughout their workday, even during times
7 which should constitute uninterrupted duty-free rest periods. Defendants encourage employees
8 to stay working and/or under employer control, as opposed to encouraging the rest and
9 nourishment rest periods are designed to provide.

10 71. Defendants also engaged in a systematic, company-wide policy and/or practice of
11 not properly training Plaintiff and other Aggrieved Employees on their entitlement to rest period
12 premium payments resulting from rest period violations. As such, Plaintiff was unaware of
13 when rest period premiums were owed to him. Accordingly, Plaintiff and other Aggrieved
14 Employees did not receive all rest period premium wages owed when compliant rest periods
15 were not provided. To the extent that Defendants did pay rest period premium wages to
16 Aggrieved Employees, such payments were admissions of their failure to provide rest periods.
17 Furthermore, based upon information and belief, to the extent employees received non-
18 discretionary remuneration, Defendants' regular rate of compensation for calculating rest period
19 premiums did not include all required remunerations or the correct calculation and resulted in an
20 underpayment of rest period premium wages. For example, to the extent Plaintiff and
21 Aggrieved Employees have been paid shift differential pay, those payments have not been
22 included in Defendants' regular rate of compensation for calculating rest period premiums and
23 has resulted in an underpayment of rest period premium wages.

24 72. Accordingly, Defendants failed to provide all rest periods and/or pay all rest
25 period premiums in violation of Labor Code sections 226.7, and 1198 and Wage Order No. 8.
26 Plaintiff and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees,
27 costs, and interest, pursuant to Labor Code sections 226.7, 1198, and 2699(a), (f), and (g).
28

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

3 73. Labor Code section 226(a) requires employers to make, keep and furnish true,
4 accurate, and complete employment records. Defendants have not provided Plaintiff and other
5 Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved
6 employee may seek civil penalties under Labor Code section 2699 for violations of wage
7 statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*,
8 15 Cal.App.5th 773, 788 (2017). (“a plaintiff seeking civil penalties under PAGA for a violation
9 of section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’
10 requirements of section 226(e)(1).”) Rather, Labor Code section 226.3 provides that any
11 employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250
12 per employee per violation in an initial citation and \$1,000 per employee for each violation in a
13 subsequent citation, for which the employer fails to provide the employee a wage statement or
14 fails to keep the required records pursuant to Section 226(a).

15 74. Defendants have provided Plaintiff and other Aggrieved Employees with
16 incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,
17 Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all
18 the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and did not pay
19 all hours recorded, Defendants did not list the correct amount of gross wages earned by Plaintiff
20 and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly, Defendants
21 failed to list the correct amount of net wages earned by Plaintiff and other Aggrieved Employees
22 in violation of Section 226(a)(5). Defendants have also failed to accurately list the total hours
23 worked by Plaintiff and other Aggrieved Employees for work performed while off-the-clock in
24 violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked in violation of Section 226(a)(9). In addition, the
26 total regular, shift differential, and overtime hours listed in Defendants’ wage statements,
27 when added together, do not sum up to the total hours worked by the employee during the
28 pertinent time period. Likewise, Defendants provide wage statements which do not properly

1 itemize the total hours worked because Defendants itemize the incorrect total number of hours
2 worked. Without additional information regarding the wage statement, an employee cannot
3 simply ‘arrive at the sum of hours worked.’ As such, Defendants’ wage statements do not
4 comply with Labor Code section 226(a)(2). Additionally, because Defendants did not calculate
5 other Aggrieved Employees’ regular rate of pay correctly for purposes of paying overtime
6 and/or premium wages, it did not list the correct amount of gross wages and net wages earned
7 by other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Defendants also
8 failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct
9 overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of
10 Section 226(a)(9). Furthermore, because Defendants failed to pay all meal period and rest period
11 premiums to Plaintiff and other Aggrieved Employees, Defendants did not list the correct
12 amount of gross wages earned by Plaintiff and other Aggrieved Employees in compliance with
13 Section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages
14 earned by Plaintiff and other Aggrieved Employees in violation of Section 226(a)(5).

15 75. Plaintiff and other Aggrieved Employees are therefore entitled to recover
16 penalties, attorneys’ fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,
17 1198.5, and/or 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN**
19 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(B), 1198.5, AND 1198**

20 76. At all relevant time herein set forth, California Labor Code section 226(b)
21 provides that every employer shall furnish current and former employees the right to inspect
22 or copy records pertaining to their employment, upon reasonable request to the employer.
23 Labor Code Section 226(c) provides that an employer must comply with a request made
24 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
25 employee’s request.

26 77. Additionally, Labor Code section 226(c) provides in relevant part:

27 An employer who receives a written or oral request to inspect or receive
28 a copy of records pursuant to subdivision (b) pertaining to a current or
former employee shall comply with the request as soon as practicable,

but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

78. Similarly, Labor Code section 1198.5 requires an employer to timely produce certain employment records upon the request of an employee or their representative.

Specifically, Section 1198.5 provides in relevant part:

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

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

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

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

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

81. At all times relevant herein, the IWC Wage Order No. 8-2001, section 7(A), provides "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and

1 authorized rest periods need not be recorded. (4) Total wages paid each payroll period,
2 including value of board, lodging, or other compensation actually furnished to the employee.
3 (5) Total hours worked in the payroll period and applicable rates of pay. This information
4 shall be made readily available to the employee upon reasonable request.”

5 82. At all times relevant herein, the operative IWC Wage Order No. 8-2001,
6 section 7(C), provides:

7 All required records shall be in the English language and in ink or
8 other indelible form, properly dated, showing month, day and year,
9 and shall be kept on file by the employer for at least three years at
10 the place of employment or at a central location within the State of
California. An employee’s records shall be available for inspection
by the employee upon reasonable request.

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

15 84. Plaintiff requested that Defendants produce his employment records pursuant to
16 California Labor Code sections 226(c) and Section 1198.5. Defendants did not fully comply
17 with this request because, among other things, a notice under Section 2810.5 was not provided
18 within the requisite time frame. Labor Code section 2699.3(c) permits aggrieved employees,
19 including Plaintiff, to recover civil penalties for Labor Code 226(c) and 1198.5 violations.
20 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
21 penalties, attorneys’ fees, costs, and interest thereon, pursuant to section 2699(a), (f), and (g).

22 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
23 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND**
24 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11080 SUBD. 7**

25 85. At all times relevant herein set forth, Labor Code section 1174(d) provides that
26 “[e]very person employing labor in this state shall ... [k]eep a record showing the names and
27 addresses of all employees employed and the ages of all minors” and “[k]eep, at a central
28 location in the state or at the plants or establishments at which employees are employed, payroll

1 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
2 units earned by and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a
4 \$500 civil penalty if they fail to maintain accurate and complete records as required by Section
5 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
6 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
7 Employees showing the daily hours they worked and the wages paid as a result of failing to
8 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
9 by them in violation of Labor Code section 1174(d).

10 86. Labor Code section 1198 provides that the maximum hours of work and the
11 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
12 the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any
13 employees for longer hours than those fixed by the order or under conditions of labor prohibited
14 by the order is unlawful.” Pursuant to the applicable Wage Order, employers are required to
15 keep accurate time records showing when the employee begins and ends each work period and
16 meal period. Cal. Code Regs. tit. 8, § 11080, subd. 7. During the relevant time period,
17 Defendants failed, on a company-wide basis, to keep accurate records of shift and meal period
18 start and stop times for Plaintiff and other Aggrieved Employees, in violation of Section 1198
19 and Wage Order No. 8.

20 87. Because Defendants failed to provide, among other things, the accurate number
21 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
22 effect during the pay period and the corresponding number of hours worked on wage statements,
23 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
24 information on the wage statements themselves, that they were paid correctly and in full and
25 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
26 other Aggrieved Employees have had to look to sources outside of the wage statements
27 themselves and reconstruct time records to determine whether in fact they were paid correctly
28 and the extent of underpayment, thereby causing them injury.

1 88. Plaintiff and other Aggrieved Employees are therefore entitled to recover
2 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
3 2699(a), (f), and (g).

4 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
5 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
6 **CODE OF REGULATIONS TITLE 8, SECTION 11080 SUBDIVISION 7**

7 89. At all times relevant herein set forth, California Labor Code section 1198
8 provides that the maximum hours of work and the standard conditions of labor shall be those
9 fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
10 1198 further provides that "[t]he employment of any employees for longer hours than those
11 fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to
12 the applicable IWC Wage Order, employers are required to keep accurate time records showing
13 when the employee begins and ends each work period and meal period. Cal. Code Regs. Tit. 8,
14 § 11080(7)(A).

15 90. During the relevant time period, Defendants failed, on a company-wide basis, to
16 keep accurate records of shift and meal period start and stop times for Plaintiff and other
17 Aggrieved Employees, in violation of Section 1198 and Wage Order No. 8.

18 91. Because Defendants failed to provide, among other things, the accurate number
19 of total hours worked, gross wages earned, net wages earned, the applicable hourly rates in
20 effect during the pay period and the corresponding number of hours worked on wage statements,
21 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
22 information on the wage statements themselves, that they were paid correctly and in full and
23 were given confusing and/or incomplete information about their employer. Instead, Plaintiff and
24 other Aggrieved Employees have had to look to sources outside of the wage statements
25 themselves and reconstruct time records to determine whether in fact they were paid correctly
26 and the extent of underpayment, thereby causing them injury.

27 92. Plaintiff and other Aggrieved Employees are therefore entitled to recover
28 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or

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

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

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

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

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

19 96. At all relevant times herein, Defendants failed to pay Plaintiff and other
20 Aggrieved Employees all wages due to them, including, but not limited to, overtime wages,
21 minimum wages, shift differential, and/or meal and rest period premium wages, within any time
22 period specified by Labor Code section 204.

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

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

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

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

7 99. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who
8 are no longer employed by Defendants all their earned wages at the time of discharge, or within
9 seventy-two hours of their leaving Defendants' employ in violation of California Labor Code
10 sections 201-203. For example, Plaintiff was untimely paid his final wages after being
11 terminated.

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

16 101. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72
18 hours of their leaving Defendants' employment, violates Labor Code sections 201 and 202.
19 Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys'
20 fees, costs, and interest, pursuant to Labor Code section 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE SUITABLE SEATING IN VIOLATION OF CALIFORNIA**
22 **LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS,**
23 **TITLE 8, SECTION 11080 SUBDIVISION 14**

24 102. California Labor Code section 1198 provides that no employer may employ an
25 employee under conditions of labor that are prohibited by the applicable IWC wage order.
26 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
27 fixed by the commission shall be the . . . standard conditions of labor for employees. The
28 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

1 103. California Code of Regulations, Title 8, section 11080(14) provides further that
2 “[a]ll working employees shall be provided with suitable seats when the nature of the work
3 reasonably permits the use of seats. [] When employees are not engaged in the active duties of
4 their employment and the nature of the work requires standing, an adequate number of suitable
5 seats shall be placed in reasonable proximity to the work area and employees shall be permitted
6 to use such seats when it does not interfere with the performance of their duties.”

7 104. Although some Aggrieved Employees were able to perform tasks that reasonably
8 permit the use of seats, Defendants refuse to provide seats in violation of the applicable wage
9 order and California Labor Code section 1198. In fact, although Plaintiff and other Aggrieved
10 Employees perform job functions that reasonably permit the use of seats, such as filling out
11 paperwork and logs, they are not provided suitable seating. Defendants dedicate a room with
12 high top tables for filling out paperwork yet do not provide seats and refuse to provide seats or
13 permit employees to sit.

14 105. Defendants’ failure to provide seats to their Aggrieved Employees such as
15 cashiers or food prepares is in violation of the applicable wage order and California Labor Code
16 section 1198. Plaintiff and other Aggrieved Employees are entitled to recover penalties,
17 attorneys’ fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

1 of the minimum wage, including meal or lodging allowances.

2 107. Effective January 1, 2015, an employer's written notice pursuant to section
3 2810.5 must also include a statement that the employee may accrue and use sick leave; has a
4 right to request and use accrued paid sick leave; may not be terminated or retaliated against
5 for using or requesting the use of accrued paid sick leave; and has the right to file a complaint
6 against an employer who retaliates.

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

10 109. On information and belief, Defendants failed to provide Plaintiff and Aggrieved
11 Employees written notice that lists all the requisite information set forth in Labor Code section
12 2810.5(a)(1). Defendants produced Plaintiff's personnel file and a portion of her employment
13 records. Absent from Plaintiff's personnel file and employment records was a Section 2810.5
14 notice containing all the requisite information.

15 110. Defendants' failure to provide Plaintiff and Aggrieved Employees with written
16 notice of basic information regarding their employment with Defendants, such as the rate(s) of
17 pay and rate(s) for overtime, is in violation of Labor Code section 2810.5.

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

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

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

26 1. For civil penalties and attorneys' fees and costs in excess of twenty-five thousand
27 dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
28 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, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage statements); 226(b), 226(c), 1198.5 and 1198 (by failing to provide employment records upon request); 1174(d), 1198 and California Code of Regulations, Title 8, section 11080(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11080(7) (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all earned wages during employment); 201 and 202 (by failing timely to pay all earned wages upon termination); 2810.5 (by failing timely to provide written notice of material terms of employment); and 1198 and California Code of Regulations, Title 8, Section 11080(14) (by failing to provide suitable seating);

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

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

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

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

3
4 Dated: October 1, 2021

Respectfully submitted,

Law Offices of Mark Yablonovich

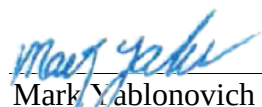
6
7 By: 
8 Mark Yablonovich
9 Tony Roberts
10 Attorneys for Plaintiff Christopher Ruiz
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EXHIBIT 1

Christopher Ruiz v. Bronco Wine Company

LAW OFFICES OF
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July 28, 2021

VIA ONLINE SUBMISSION

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

Subject: *Christopher Ruiz v. Bronco Wine Company, a California corporation, et al.*

Dear PAGA Administrator:

This law firm represents Christopher Ruiz (“Mr. Ruiz”) in connection with his claims under the California Labor Code against his former employer Bronco Wine Company, a California corporation (“Bronco Wine”).

The employer may be contacted directly:

Bronco Wine Company, a California corporation
6342 Bystrum Rd.
Ceres, California 95307

Mr. Ruiz intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for Bronco Wine’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”). Mr. Ruiz seeks relief on behalf of himself, the State of California, and other persons who are or were employed by Bronco Wine in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement (“Aggrieved Employees”). Mr. Ruiz sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Bronco Wine employed Mr. Ruiz from approximately April 24, 2018, to approximately November 2, 2020, as an hourly-paid Racker Blender at Bronco Wine’s plant located in Ceres, California. Mr. Ruiz typically worked approximately 8 to 12 hours or more per workday, five to seven days per week, and up to forty hours or more per week. His job duties included, but were not limited to, facilitating wine movements from tank to tank within a tank farm, cleaning tanks, moving wine from tanks, checking equipment, and filling out logs and related paperwork.

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

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

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Bronco Wine's Company-Wide and Uniform Payroll and Human Resources Practices

Bronco Wine is a California corporation dedicated to growing, producing, and selling wines. Upon information and belief, Bronco Wine maintains a centralized Human Resources department in California for all non-exempt, hourly-paid employees working for Bronco Wine in California, including Mr. Ruiz and other Aggrieved Employees. At all relevant times, Bronco Wine issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Mr. Ruiz and other Aggrieved Employees, regardless of their location or position.

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

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11080 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11080 ("Wage Order No. 8"),² 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. The applicable Wage Order 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.

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, Mr. Ruiz reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

² To the extent Wage Order 10 or any other Wage Order applies to any of the claims in this letter, Bronco Wine also violated those wage orders as well.

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Bronco Wine failed to pay all overtime wages owed to Mr. Ruiz and other Aggrieved Employees. During the relevant time period, Mr. Ruiz 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 Bronco Wine'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. Based on information and belief, not all recorded work hours were paid because of rounding practices and/or inaccurate timekeeping policies and practices. As a result, Mr. Ruiz believes the hours he and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Mr. Ruiz and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

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

Furthermore, Bronco Wine's regular rate of pay for calculating overtime wages did not include all required shift differential payments or the correct calculation. Therefore, during times when Mr. Ruiz and other Aggrieved Employees worked overtime and received shift differential pay, Bronco Wine did not pay all overtime wages by paying a lower overtime rate than required by California law.

Based on the foregoing, Mr. Ruiz 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 the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

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Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11080, Section F Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order 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 the applicable Wage Order 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, § 11080, subd. 2(K) (defining “Hours Worked”).

Bronco Wine has not paid for all the time Mr. Ruiz and Aggrieved Employees have worked throughout the day including all 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 Bronco Wine. Mr. Ruiz and other Aggrieved Employees are subjected to Bronco Wine’s control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the workday such as unpaid meal periods.

Bronco Wine also has had a continuous policy of not paying Mr. Ruiz and Aggrieved Employees for all hours worked throughout the day, including, but not limited to rounding, before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to the control of Bronco Wine.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Bronco Wine 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 the applicable Wage Order. Mr. Ruiz and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5,³ 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 11080 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order 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 the applicable Wage, an employer may not require, cause or permit an employee to work for a period of more than five hours per day

³ 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 section 225.5.

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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, § 11080, 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. The applicable Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11080, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

Bronco Wine has failed to provide meal periods and authorize and permit rest periods to Mr. Ruiz and other Aggrieved Employees. As a matter of policy and practice, Bronco Wine has not provided Mr. Ruiz and other Aggrieved Employees with full 30-minute meal periods and net 10-minute rest periods for each day worked where they are free from Bronco Wine’s required duties and control. For example, Bronco Wine’s placement of its time clocks as well as its clock-in and clock-out policies and procedures for meal periods and rest periods has resulted in Bronco Wine providing meal periods of less than 30 minutes and rest periods of less than 10 minutes for Mr. Ruiz and Aggrieved Employees. Bronco Wine has subjected Mr. Ruiz and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods. Bronco Wine encourages employees to stay working and/or under employer control, as opposed to encouraging the rest and nourishment meal periods and rest periods are designed to provide.

Bronco Wine knew or should have known that as a result of its policies and/or practices, Mr. Ruiz 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 rest periods and that they did not receive timely meal periods and rest periods. As a result, Mr. Ruiz and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

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

Accordingly, Bronco Wine has 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 the applicable Wage Order. Mr. Ruiz 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. Bronco Wine has not provided Mr. Ruiz 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).

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

Bronco Wine has provided Mr. Ruiz and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Bronco Wine violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Bronco Wine did not record all the hours Mr. Ruiz and other Aggrieved Employees worked and/or pay all hours recorded; Bronco Wine

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did not list the correct amount of gross wages and net wages earned by Mr. Ruiz and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. Bronco Wine also failed to accurately list the total hours worked by Mr. Ruiz 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, shift differential, and overtime hours listed in Bronco Wine's wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Likewise, Bronco Wine provides wage statements which do not properly itemize the total hours worked because Bronco Wine 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, Bronco Wine's wage statements do not comply with Labor Code section 226(a)(2).

Furthermore, because Bronco Wine has failed to pay all meal period and rest period premiums to Mr. Ruiz and other Aggrieved Employees, Bronco Wine has not listed the correct amount of gross wages and net wages earned by Mr. Ruiz and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5).

Because Bronco Wine has 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, Mr. Ruiz 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, Mr. Ruiz and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Ruiz requested Bronco Wine to produce his employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and Section 1198.5 which requires an employer to produce records within 30 days. Bronco Wine did not fully comply with this request because, among other things, a notice under Section 2810.5 was not provided. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for Labor Code 226(c) and 1198.5 violations.

Mr. Ruiz and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code section 226(a), 226(c) and 1198.5, pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

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Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11080 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, Bronco Wine willfully failed to maintain accurate payroll records for Mr. Ruiz 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 the applicable wage order Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11080, subd. 7. During the relevant time period, Bronco Wine failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times and total daily hours for Mr. Ruiz and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

Due to Bronco Wine’s failure to maintain accurate payroll and time records, Mr. Ruiz 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.

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During the relevant time period, Bronco Wine did not pay Mr. Ruiz and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, shift differential pay, and/or meal period and rest period premium wages, within any time period specified by Labor Code section 204.

Mr. Ruiz 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, 202, and 203

California Labor Code sections 201-202⁴ 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.

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

Furthermore, Bronco Wine has not paid Mr. Ruiz and other Aggrieved Employees who are no longer employed by Bronco Wine all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Bronco Wine's employ including, but not limited to, overtime wages, minimum wages, shift differential pay, and/or meal period and rest period premium wages.

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

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11080 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).

The applicable Wage Order provides 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

⁴ Mr. Ruiz also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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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 § 11080, subd. 14.

Although Mr. Ruiz and other Aggrieved Employees perform job functions that reasonably permit the use of seats, such as filling out paperwork and logs, they are not provided suitable seating. In fact, Bronco Wine dedicates a room with high top tables for filling out paperwork yet does not provide seats. Bronco Wine refuses to provide seats or permit employees to sit in violation of Labor Code section 1198 and the applicable Wage Order. Accordingly, Mr. Ruiz 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, Bronco Wine failed to provide Mr. Ruiz and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Bronco Wine produced Mr. Ruiz’s personnel file and a portion of his employment records. Absent from Mr. Ruiz’s personnel file and employment records was a Section 2810.5 notice containing all the requisite information. Bronco Wine’s failure to provide Mr. Ruiz and other Aggrieved Employees with written notice of basic information regarding their employment with Bronco Wine, such as the rate(s) of pay and rate(s) for overtime, is in violation of Labor Code section 2810.5.⁵ Mr. Ruiz 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).

⁵ Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of this Labor Code provision.

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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.”⁶ 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.” Bronco Wine, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Ruiz’s 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), Mr. Ruiz 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, Mr. Ruiz 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, Mr. Ruiz seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Ruiz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other Aggrieved Employees, and the State of California against Bronco Wine for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order, as well as sections 225.5, 226(c), 1198.5, 2810.5, which are ‘curable’ violations pursuant to section 2699.3(c)(2)(A).

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

⁶ Mr. Ruiz does not seek to recover any unpaid wages that are provided for in Section 558(a). He only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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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,



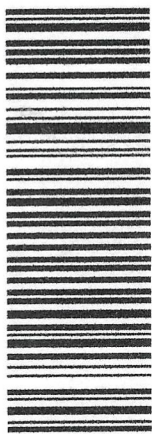
Mark Yablonovich

Copy to: Fred T. Franzia
6342 Bystrum Rd.
Ceres, California 95307
Agent for service of process for Bronco Wine Company, a California corporation
Via U.S. Certified Mail

Bronco Wine Company, a California corporation
P.O. Box 789
Ceres, California 95307
Via U.S. Certified Mail

LAW OFFICES OF
MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511



7014 1200 0001 5878 8437

Bronco Wine Company, a California corporation
6342 Bystrom Rd.
Ceres, California 95307

893888 07
\$7.360
US POSTAGE
FIRST-CLASS
06250012374044
FROM 90212



U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$	Certified Fee	Return Receipt Fee (Endorsement Required)	Restricted Delivery Fee (Endorsement Required)	Total Postage & Fees

Postmark Here

Sent To: _____
Street, Apt. No., or PO Box No. _____
City, State, ZIP+4 _____
PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
**Bronco Wine Company
6342 Bystrom Rd.
Ceres, CA 95307**

2. Article Number (Transfer from service label)
9590 9402 6539 1028 2667 89

COMPLETE THIS SECTION ON DELIVERY

A. Signature **X** Agent ☐
B. Received by (Printed Name) Addressee ☐
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

7014 1200 0001 5878 8437

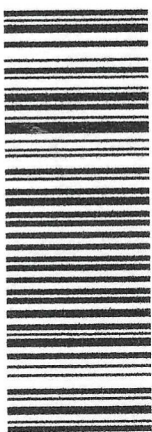
PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

LAW OFFICES OF
MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511

CERTIFIED MAIL™



7014 1200 0001 5878 8451

Bronco Wine Company, a California corporation
P.O. Box 789
Ceres, California 95307

893668.02
\$7.360
US POSTAGE
FIRST-CLASS
06250012374044
FROM 90212



7014 1200 0001 5878 8451

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

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

City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

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1. Article Addressed to:

Bronco Wine Company
P.O. Box 789
Ceres, CA 95307

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery Mail (over \$500) | |

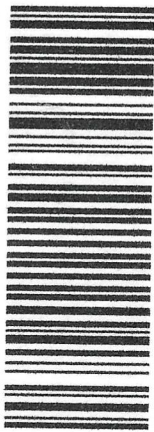
PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

LAW OFFICES OF

MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511



7014 1200 0001 5878 8444

Fred T. Franzia
6342 Bystrum Rd.
Ceres, California 95307

\$7.36 0
US POSTAGE
FIRST-CLASS
062S0012374044
FROM 90212



7014 1200 0001 5878 8444

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

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

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To

Street, Apt. No.,
or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

Fred T. Franzia
6342 Bystrum Rd.
Ceres, CA 95307



9590 9402 6539 1028 2667 96

2. Article Number (Transfer from service label)

7014 1200 0001 5878 8444

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express®

7014 1200 0001 5878 8444

Domestic Return Receipt

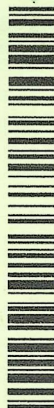
COMPLETE THIS SECTION ON DELIVERY

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1. Article Addressed to:

Fred T. Franzia
6342 Bystrom Rd.
Ceres, CA 95307



9590 9402 6539 1028 2667 96

2. Article Number (Transfer from service label)

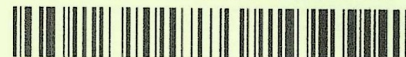
7014 1200 0001 5878 8451

PS Form 3811, July 2020 PSN 7530-02-000-9053

PS Form 3811, July 2020 PSN 7530-02-000-9053

7014 1200 0001 5878 8451

9590 9402 6539 1028 2668 02



Bronco Wine Company
P.O. Box 789
Ceres, CA 95307

1. Article Addressed to:

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

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) ☒ Date of Delivery 8-2-21
- C. Is delivery address different from item 1? ☐ Yes ☐ No
- D. If YES, enter delivery address below:

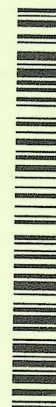
- 3. Service Type ☐ Priority Mail Express® ☐ Adult Signature ☐ Registered Mail™ ☐ Certified Mail® ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Restricted Delivery
- 4. Is delivery address different from item 1? ☐ Yes ☐ No
- 5. If YES, enter delivery address below:

COMPLETE THIS SECTION ON DELIVERY

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

1. Article Addressed to:

Bronco Wine Company
6342 Bystrom Rd.
Ceres, CA 95307



9590 9402 6539 1028 2667 89

2. Article Number (Transfer from service label)

7014 1200 0001 5878 8437

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) ☒ Date of Delivery 8-2-21
- C. Is delivery address different from item 1? ☐ Yes ☐ No
- D. If YES, enter delivery address below:

- 3. Service Type ☐ Priority Mail Express® ☐ Adult Signature ☐ Registered Mail™ ☐ Certified Mail® ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Restricted Delivery
- 4. Is delivery address different from item 1? ☐ Yes ☐ No
- 5. If YES, enter delivery address below:

7014 1200 0001 5878 8444

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) ☒ Date of Delivery 8-2-21
- C. Is delivery address different from item 1? ☐ Yes ☐ No
- D. If YES, enter delivery address below:

- 3. Service Type ☐ Priority Mail Express® ☐ Adult Signature ☐ Registered Mail™ ☐ Certified Mail® ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Restricted Delivery
- 4. Is delivery address different from item 1? ☐ Yes ☐ No
- 5. If YES, enter delivery address below:

7014 1200 0001 5878 8437

Domestic Return Receipt