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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11
12 CHRISTINA WHITE, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
14 employees,

15 Plaintiff,

16 vs.

17 REVOLUTION FOODS, INC., a Delaware
corporation; and DOES 1 through 10,
18 inclusive,

19 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY
SEP 24 2021
CLERK OF THE COURT
BY: D. OLIVER
Deputy Clerk

RG21113829

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Christina White, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 et seq. (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current and
7 former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on July 20, 2021, until judgment (“non-party Aggrieved Employees”). Plaintiff’s share
14 of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in
27 this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed a Statement of Information form with the California Secretary of State designating a principal place of business in Oakland, County of Alameda, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court, because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, et seq., the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Christina White is a resident of Hayward, in Alameda County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately January 2019 to September 2020. Plaintiff worked for Defendants based out of their client location in San Lorenzo, California. Plaintiff typically worked eight (8) to twelve (12) hours or more per day, five (5) to six (6) days per week. At the time Plaintiff's employment with Defendants ended, she was compensated approximately \$23.00 per hour. As a Delivery Driver, her job duties included, without limitation, delivering meals to local schools and unloading products, verifying delivery plans and routes, conducting vehicle pre-check inspections, and managing packing slips; while as a Dispatch Supervisor, Plaintiff's job duties included, without limitation, assisting with loading trucks at the docks, monitoring and inspecting meals, communicating with drivers regarding deliveries and routes, and continuing her duties as a Delivery Driver by covering routes for other drivers, which she did approximately 80% of the time.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively

1 unconscionable. Specifically, Defendants presented employees with a “Mutual Agreement to
2 Arbitrate” (referred to as, “Arbitration Agreement”), which had to be reviewed and signed
3 immediately. Also, employees did not have a meaningful opportunity to negotiate the terms of
4 the Arbitration Agreement. Rather, it was provided to Defendants’ employees for them to sign
5 on a take-it or leave-it basis, along with all of the other on-boarding documents. Furthermore,
6 Defendants did not set forth in the agreement or otherwise provide employees with the rules
7 which will govern the arbitration, instead forcing employees to seek this information out on
8 their own.

9 8. REVOLUTION FOODS, INC. was and is, upon information and belief, a
10 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are
11 engaged throughout this county and the State of California.

12 9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
13 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
14 complaint and serve such fictitiously named Defendants once their names and capacities
15 become known.

16 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of REVOLUTION FOODS, INC. at all relevant
18 times.

19 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, REVOLUTION
21 FOODS, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “REVOLUTION”),
22 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
23 with, each of the other co-Defendants and was acting within the course and scope of such
24 agency, employment, joint venture, or concerted activity with legal authority to act on the
25 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
26 official policy of Defendants.

27 12. At all relevant times, Defendants, and each of them, ratified each and every act or
28 omission complained of herein. At all relevant times, Defendants, and each of them, aided and

1 abetted the acts and omissions of each and all the other Defendants in proximately causing the
2 damages herein alleged.

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

6 **PAGA REPRESENTATIVE ALLEGATIONS**

7 14. Defendants create and deliver pre-packed health-focused meals to underserved
8 schools and communities and operate in 23 states, including approximately 3 to 4 locations in
9 the San Francisco Bay Area and the Greater Los Angeles Area. Upon information and belief,
10 Defendants maintain a single, centralized Human Resources (“HR”) department at their
11 corporate headquarters in Oakland, California, which is responsible for the recruiting and hiring
12 of new employees, and communicating and implementing Defendants’ company-wide policies,
13 including timekeeping policies and meal and rest period policies, to employees throughout
14 California.

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

22 16. Upon information and belief, Defendants maintain a centralized Payroll
23 department at their corporate headquarters in Oakland, California, which processes payroll for
24 all non-exempt, hourly paid employees working for Defendants at their various locations and
25 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
26 upon information and belief, Defendants issue the same formatted wage statements to all non-
27 exempt, hourly paid employees in California, irrespective of their work locations. Upon
28 information and belief, Defendants process payroll for departing employees in the same manner

1 throughout the State of California, regardless of the manner in which each employee's
2 employment ends.

3 17. Defendants continue to employ non-exempt or hourly paid employees in
4 California.

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

9 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
10 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
11 were not recorded.

12 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive certain wages for overtime compensation and that they were not receiving certain wages
15 for overtime compensation.

16 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that other non-party Aggrieved Employees were entitled to be paid at a
18 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income all
19 income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
20 compensation, but failed to incorporate all forms of remuneration in calculating the regular rate
21 of pay for other non-party Aggrieved Employees.

22 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive at least minimum wages for compensation and that they were not receiving at least
25 minimum wages for work that was required to be done off-the-clock. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
27 least minimum wages for work done off-the-clock.

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

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at
3 their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
4 minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not
5 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
6 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

7 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
9 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
10 (1) additional hour of pay at their regular rates of pay when they were not authorized and
11 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
12 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
13 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
14 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
15 authorized and permitted to take a compliant rest period.

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

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

25 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of all wages earned upon termination of employment. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive

1 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
2 and/or rest premiums, and/or reporting time pay within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of wages during their employment. In violation of the California Labor Code,
6 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, meal and/or rest premiums,
8 and/or reporting time pay within permissible time periods.

9 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they were prohibited from issuing instruments for the payment of wages
11 that were not payable in cash on demand, without discount and with authorization, but did so, in
12 violation of the California Labor Code.

13 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to the
15 portion of wages previously paid and subsequently unlawfully deducted by Defendants.

16 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 payment of wages as designated by statute. In violation of the California Labor Code,
19 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages than
20 required by statute while purporting to pay them proper wages.

21 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
23 and expenses Plaintiff and other non-party Aggrieved Employees incurred obtaining mandatory
24 physical examinations and/or drug tests, but failed to do so.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
27 paid reporting time pay when they reported to work for their scheduled shift but were put to
28 work for less than half of the regular schedule. In violation of the California Labor Code and

1 applicable IWC Wage Order, Defendants did not pay Plaintiff and other non-party Aggrieved
2 Employees all reporting time pay due.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 receive reimbursement for all business-related expenses and costs they incurred during the
6 course and scope of their employment and that they did not receive reimbursement of applicable
7 business-related expenses and costs incurred.

8 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
10 other non-party Aggrieved Employees with safety devices and safeguards, such as personal
11 protective equipment to protect their life, safety, and health in the workplace, but failed to do so.

12 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
14 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
15 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
16 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
17 were properly denied wages, all in order to increase Defendants' profits.

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

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

27 39. Plaintiff and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or

1 former employees and one or more of the alleged violations were committed against them.

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

- 5 (a) The aggrieved employee shall give written notice by online filing
6 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
7 the employer of the specific provisions of the California Labor Code
8 alleged to have been violated, including the facts and theories to support
9 the alleged violations.
- 10 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
11 2699.3(a) and any employer response to that notice shall be accompanied
12 by a filing fee of seventy-five dollars (\$75).
- 13 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
14 employer and the aggrieved employee by certified mail that it does not
15 intend to investigate the alleged violation within sixty (60) calendar days
16 of the postmark date of the Employee’s Notice. Upon receipt of the
17 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
18 (65) calendar days of the postmark date of the Employee’s Notice, the
19 aggrieved employee may commence a civil action pursuant to California
20 Labor Code section 2699 to recover civil penalties in addition to any
21 other penalties to which the employee may be entitled.

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

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

1 and theories to support the alleged violation.

2 (e) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(c) and any employer response to that notice shall be accompanied
4 by a filing fee of seventy-five dollars (\$75).

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

13 42. On July 20, 2021, Plaintiff provided written notice by online filing to the LWDA
14 and by certified mail to Defendants of the specific provisions of the California Labor Code
15 alleged to have been violated, including facts and theories to support the alleged violations, in
16 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
17 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
18 Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA
19 Case Number LWDA-CM-838544-21. A true and correct copy of Plaintiff's written notice to
20 the LWDA and Defendants dated July 20, 2021, is attached hereto as "Exhibit 1."

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

24 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
25 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
26 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 222.5, 223, 224,
27 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401 and 6403.

28 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on

1 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
2 provision regulating hours and days of work in any order of the Industrial Welfare Commission
3 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
4 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
5 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
6 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
7 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
8 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
9 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
10 herself, all other non-party Aggrieved Employees, and the State of California against
11 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
12 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
13 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for
14 violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

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

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

21 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
22 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
23 attorney general, seeks assessment and collection of civil penalties for herself, all other non-
24 party Aggrieved Employees, and the State of California against Defendants for violations of
25 California Labor Code sections 201, 202, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 510,
26 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401 and 6403.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 50. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221, 222.5,
9 223, 224, 226(a), 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
11 violations of those Labor Code sections not found in section 2699.5, including sections 516,
12 1182.12, 6401, and 6403.

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

- 15 (g) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay, as set
18 forth below;
- 19 (h) Violation of Labor Code sections 1182.12, 1194, 1197, 1and 198, and the
20 applicable IWC Wage Order for Defendants’ failure to compensate
21 Plaintiff and other non-party Aggrieved Employees with at least
22 minimum wages for all hours worked, as set forth below;
- 23 (i) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
24 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
25 and other non-party Aggrieved Employees with meal periods, as set forth
26 below;
- 27 (j) Violation of Labor Code sections 226.7, 516, and 1198, and the
28 applicable IWC Wage Order for Defendants’ failure to authorize and

1 permit Plaintiff and other non-party Aggrieved Employees to take rest
2 periods, as set forth below;

3 (k) Violation of Labor Code sections 226(a) and 1198, and the applicable
4 IWC Wage Order for failure to provide accurate and complete wage
5 statements to Plaintiff and other non-party Aggrieved Employees, as set
6 forth below;

7 (l) Violation of Labor Code sections 1174(d) and 1198, and the applicable
8 IWC Wage Order for failure to maintain payroll records, as set forth
9 below;

10 (m) Violation of Labor Code section 204 for failure to pay all earned wages
11 during employment, as set forth below;

12 (n) Violation of Labor Code sections 201 and 202 for failure to pay all earned
13 wages upon termination, as set forth below;

14 (o) Violation of Labor Code sections 212 and 213 for issuing instruments for
15 the payment of wages that were not payable in cash on demand, without
16 discount, and with prior authorization, as set forth below;

17 (p) Violation of Labor Code sections 221 and 224 for unlawfully deducting a
18 portion of wages previously paid to Plaintiff and other non-party
19 Aggrieved Employees, as set forth below;

20 (q) Violation of Labor Code section 223 for secretly paying Plaintiff and
21 other non-party Aggrieved Employees lower wages than required by
22 statute, while purporting to pay the proper wages, as set forth below;

23 (r) Violation of Labor Code section 222.5 for failure to pay the costs of
24 mandatory physical examinations and/or drug testing, as set forth below;

25 (s) Violation of Labor Code section 1198 and the applicable IWC Wage
26 Order for failure to pay reporting time pay when Plaintiff and other non-
27 party Aggrieved Employees were put to work for less than half of their
28 regular scheduled shifts, as set forth below;

- 1 (t) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
2 and other non-party Aggrieved Employees for all business expenses
3 necessarily incurred, as set forth below; and
- 4 (u) Violation of Labor Code sections 6401 and 6403 for failure to provide
5 Plaintiff and other aggrieved employees with safety devices and
6 safeguards for the workplace, as set forth below.

7 **FAILURE TO PAY OVERTIME**

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

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

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

18 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
19 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
20 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-
21 half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
22 hours in a workweek.

23 55. The applicable IWC Wage Order further provides that Defendants are and were
24 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
25 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
26 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
27 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

28 56. California Labor Code section 510 codifies the right to overtime compensation at

1 one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
3 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
4 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
5 the seventh (7th) day of work.

6 57. First, during the relevant period, Defendants had, and continue to have, a
7 company-wide policy of strictly staffing locations based on the labor hours allocated by each
8 location's labor or payroll budget set by corporate. This practice of labor budgeting, combined
9 with the assignment of heavy workloads, strict deadlines, and single-staffing particularly during
10 graveyard shifts, has resulted in, and continues to result in, chronic understaffing and a lack of
11 adequate meal period coverage, because there were too few employees on duty to handle the
12 workload. Moreover, Defendants have a practice of failing to schedule and/or adhere to a
13 schedule of meal periods, which further caused Plaintiff and other non-party Aggrieved
14 Employees to not be relieved of their duties for compliant meal periods. As a result of this
15 inadequate meal period coverage, Plaintiff and other non-party Aggrieved Employees were not
16 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
17 receive a meal period.

18 58. Second, because Defendants frowned upon Plaintiff and other non-party
19 Aggrieved Employees accruing meal period penalties, Defendants' management pressured
20 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods but continue
21 working through their meal period, in order to reflect compliant meal periods and limit the meal
22 penalties that Defendants would otherwise owe. For example, Plaintiff was pressured to clock
23 out for her meal periods but continue to work at least twice per week while working on the dock
24 and/or forego her meal periods entirely each day that she had to drive, forcing her to eat her
25 meals while driving. Similarly, during the relevant time period, Plaintiff's meal periods were
26 cut short and interrupted at least 2 to 3 times per week by other managers calling her cellular
27 phone during meal periods to inquire about work-related matters.

28 59. Third, during the relevant period, Defendants had, and continue to have, a

1 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
2 Employees from recording hours worked that were outside of their scheduled shifts, upon threat
3 of discipline, in order to limit the amount of overtime employees could accrue. This policy of
4 limiting overtime, coupled with Defendants' use of labor budgets and assignment of heavy
5 workloads, led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before
6 and after their scheduled shift times in order to complete their assigned tasks. For example,
7 Plaintiff spent approximately 15 to 30 minutes every day responding to numerous phone calls
8 and/or text messages from Defendants' managers before her scheduled shift regarding the tasks
9 and duties to be completed for that day, but was not compensated for this time. Defendants'
10 managers also required Plaintiff and other non-party Aggrieved Employees to purchase
11 ingredients and food products on their way to work; on at least three (3) occasions, Plaintiff
12 spent approximately 20 minutes doing so but was not compensated for this time.

13 60. Further, because management discouraged Plaintiff and other non-party
14 Aggrieved Employees from clocking in prior to their scheduled shift start-times, Plaintiff was
15 forced to report to work 15 to 60 minutes prior to her scheduled shift every day to prepare for
16 the day's deliveries, performing tasks such as helping in the kitchen to set up food trays,
17 meeting and assisting drivers at various client sites, cleaning the dock, counting inventory, and
18 gathering paperwork for delivery routes, but was not permitted to record this time she spent
19 working. Finally, on information and belief, prior to the start of each shift and before clocking
20 in, other non-party Aggrieved Employees would have to wait for and undergo mandatory
21 COVID-19 health screenings, including temperature checks, conducted by Quality Control
22 personnel, and were not compensated for this off-the-clock time.

23 61. Defendants' company-wide practices and policies to discourage and limit
24 overtime accrual, also led Plaintiff and other non-party Aggrieved Employees to perform work-
25 related duties after they clocked out at their scheduled shift end-times. For example, as a
26 Driver, Plaintiff was required to make deliveries after her shifts approximately 1 to 3 times per
27 week for about three (3) months, and she spent 30 minutes and up to two (2) hours doing so.
28 Moreover, as a Dispatch Supervisor, approximately 3 to 4 times per week, Plaintiff was forced
to report back to the dock after she had clocked out at the end of her scheduled shift to complete

1 her duties and/or assist her coworkers with tasks. Plaintiff spent up to 20 to 90 minutes per
2 instance but was not compensated for this time. Further, Plaintiff was inundated with work-
3 related group text messages and phone calls initiated by her managers regarding work-related
4 matters after each scheduled shift and she spent 30 minutes each day off-the-clock reviewing
5 and responding to these numerous phone messages. Finally, on information and belief,
6 Defendants required other non-party Aggrieved Employees to complete mandatory road tests
7 and/or driving trainings outside of their scheduled shifts, but did not compensate them for this
8 time. Defendants could have recorded this off-the-clock work, but refused to do so to avoid
9 paying Plaintiff and other non-party Aggrieved Employees overtime wages.

10 62. Defendants knew or should have known that as a result of these company-wide
11 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working
12 before and after their shifts and/or during their meal periods, and were suffered or permitted to
13 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
14 Employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more,,
15 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
16 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime
17 hours they actually worked.

18 63. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
19 correct overtime rate for the recorded overtime hours that they generated. In addition to an
20 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
21 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
22 California Labor Code, Defendants failed to incorporate all compensation, including incentive
23 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
24 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
25 when other non-party Aggrieved Employees worked overtime and received these other forms of
26 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

27 64. Specifically, Defendants paid Plaintiff and/or other non-party Aggrieved
28 Employees incentive pay and/or nondiscretionary bonuses, which were listed on their wage
statements as "Bonus". During pay periods that other non-party Aggrieved Employees were

1 paid overtime wages, Defendants did not incorporate the nondiscretionary bonuses and/or
2 incentive pay into other non-party Aggrieved Employees' regular rate of pay and, as a result,
3 paid them at incorrect and lower rates of pay for overtime hours worked. Specifically,
4 Defendants paid other non-party Aggrieved Employees 1.5 times their hourly rate of pay instead
5 of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime
6 rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages
7 to other non-party Aggrieved Employees on a company-wide basis.

8 65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 the balance of overtime compensation as required by California law, violates the provisions of
10 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
12 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

14 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

15 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
17 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
18 Compensable work time is defined by the applicable wage order, IWC Wage Order No. 5-2001,
19 as "the time during which an employee is subject to the control of an employer, and includes all
20 the time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

22 67. First, as set forth above, Defendants' company-wide practice of utilizing labor
23 budgets, assignment of heavy workloads coupled with the expectation that Plaintiff and other
24 non-party Aggrieved Employees complete all of their assigned tasks within strict deadlines,
25 policy of single-staffing certain shifts, and subsequent lack of meal period coverage, impeded
26 Plaintiff and other non-party Aggrieved Employees from taking all uninterrupted meal periods
27 to which they were entitled and forced Plaintiff and other non-party Aggrieved Employees to
28 work off-the-clock. Moreover, due to Defendants' policies and/or practices of understaffing

1 while assigning heavy workloads, and failing to schedule and/or adhere to a schedule of meal
2 periods, Plaintiff and other non-party Aggrieved Employees were forced to forego meal periods
3 entirely, have their meal periods interrupted and cut short, and/or were otherwise not relieved of
4 all duties during meal periods. Moreover, as set forth above, in order to prevent employees
5 from accruing meal period penalties, Defendants' management pressured employees to clock
6 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
7 but required them to continue working, time for which they were not paid.

8 68. Second, as stated above, during the relevant time period, as a result of
9 Defendants' policy of limiting the amount of overtime employees could accrue, Plaintiff and
10 other non-party Aggrieved Employees were forced to work off-the-clock before and after their
11 scheduled shift start and end times to complete their work-related tasks. As stated, Defendants
12 required Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock,
13 including performing pre- and post-shift work such as: meeting and assisting drivers at various
14 sites prior to clocking in for their shift; reporting to the warehouse to assist the kitchen staff with
15 packaging food prior to clocking in for their shift; cleaning the dock, counting inventory and
16 gathering paperwork for delivery routes off-the-clock; making deliveries and running company
17 errands off-the-clock; responding to phone calls and/or text messages from managers regarding
18 various work-related matters off-the-clock; submitting to off-the-clock mandatory COVID-19
19 screenings and/or temperature checks; and taking mandatory road tests and driving trainings off-
20 the-clock. Due to Defendants' company-wide practices and policies to discourage and limit the
21 amount of overtime employees could accrue, Plaintiff and other non-party Aggrieved
22 Employees would get reprimanded and threatened with discipline and/or termination by
23 management if they reported this off-the-clock work outside of their scheduled shift times.

24 69. Third, Defendants maintained and implemented a company-wide policy of
25 requiring employees to travel to a medical facility on their own time and using their own
26 personal vehicles or obtain alternate transportation to undergo mandatory drug testing and/or
27 physical examinations. At all times, Defendants were in control of scheduling the date and time
28 for the testing and/or physical examinations, selecting the provider or facility where the testing

1 and/or physical examinations were to take place, and determining the scope of the testing and/or
2 physical examinations. Defendants gave other non-party Aggrieved Employees strict
3 instructions to undergo drug testing and/or physical examinations, and other non-party
4 Aggrieved Employees underwent the testing and/or examinations for the sole benefit of
5 Defendant. Other non-party Aggrieved Employees were required to travel in their own personal
6 vehicles or obtain alternate transportation and spend time undergoing Defendants' mandatory
7 drug tests and/or physical examinations. Defendants did not compensate other non-party
8 Aggrieved Employees for the time they spent traveling to and from the medical facilities and
9 completing the mandatory drug testing and/or physical examinations.

10 70. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
11 that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours
12 did not qualify for overtime premium payment, Defendants did not pay at least minimum wages
13 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
14 1194, 1197, and 1198.

15 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
16 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
17 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

20 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

21 72. At all relevant times herein set forth, the applicable IWC Wage Order and
22 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
23 non-party Aggrieved Employees' employment by Defendants.

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

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

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

6 75. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
7 and the applicable IWC Wage Order also require employers to provide a second meal period of
8 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
9 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
10 hours worked is no more than twelve (12) hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal period was not waived.

12 76. During the relevant period, as stated, Defendants had, and continued to have,
13 company-wide policies and/or practices of understaffing locations, including single-staffing
14 certain shifts, due to labor budgeting and/or limited payroll allocation, and failing to schedule
15 and/or adhere to a schedule of meal periods, which resulted in a lack of meal period coverage
16 and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
17 uninterrupted meal periods to which they were entitled. These company-wide practices,
18 coupled with the heavy workload and pressure from Defendants that employees complete
19 assigned tasks within strict deadlines, impeded Plaintiff and other non-party Aggrieved
20 Employees from taking timely, uninterrupted and compliant meal periods. As a result, Plaintiff
21 and other non-party Aggrieved Employees were forced to work in excess of five (5) hours
22 before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo
23 their meal periods altogether. For example, Plaintiff took her meal period after the sixth or
24 seventh hour of her scheduled shift on days that she had to drive delivery routes, and on days
25 when Plaintiff was working on the dock, she took her meal period late after the sixth hour of her
26 scheduled shift at least 2 to 3 times per week.

27 77. As another example, because Plaintiff was often the only driver during graveyard
28 shifts, she was prevented from taking timely, uninterrupted 30-minute meal periods and was

1 forced to work through her meal period entirely and eat her meals while driving. In addition, as
2 stated, when Plaintiff was working on the dock (and not required to drive and/or cover other
3 drivers' routes), she was forced to work through her meal periods at least twice per week due to
4 the lack of meal period coverage and heavy workload assignments. In addition, as stated,
5 Plaintiff would have her meal periods interrupted and/or cut short at least 2 to 3 times per week
6 due to a lack of coverage and to attend to her managers' work-related inquiries.

7 78. Further, as stated, because Defendants frowned upon Plaintiff and other non-
8 party Aggrieved Employees accruing meal period penalties, Defendants management pressured
9 Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or falsified
10 or altered employees' time records, in order to reflect compliant meal periods, regardless of
11 whether they had received a compliant meal period, in order to strictly limit meal penalties that
12 Defendants would otherwise owe.

13 79. Additionally, Defendants did not provide Plaintiff and other non-party Aggrieved
14 Employees with second 30-minute meal periods on days when they worked in excess of 10
15 hours in one day. For example, Plaintiff worked in excess of 10 hours and was only provided
16 with one meal period and did not receive any meal period penalties. Plaintiff and other non-
17 party Aggrieved Employees did not sign valid meal period waivers on days that they were
18 entitled to meal periods and were not relieved of all duties.

19 80. Furthermore, Defendants had a company-wide policy of requiring all newly hired
20 employees to sign blanket meal period waivers at or near their time of hire. Defendants took the
21 position that non-exempt, hourly paid employees had waived their rights to first and second
22 meal periods for the entirety of their employment and, on that basis, did not provide them with
23 all meal periods to which they were entitled. Specifically, Defendants' "Meal Period Waiver"
24 form provides that the meal period waiver remains in effect until the employee provides "at least
25 one day's notice to Leticia Rubalcava in Human Resources at
26 LRubalcava@revolutionfoods.com" and presumably in writing since the revocation must be
27 expressly stated in an e-mail. Defendants' presumption that first meal periods would not be
28 provided for shifts in excess of five (5) hours but less than six (6) hours, and second meal

1 periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12)
2 hours due to blanket meal period waivers, and imposition on employees to revoke the waivers in
3 writing by e-mail to Human Resources personnel, discouraged and impeded Plaintiff and other
4 non-party Aggrieved Employees from taking all second meal periods to which they were
5 entitled.

6 81. Furthermore, an employer's obligation to provide a meal period is only
7 "triggered" when the employer "employs an employee for a work period of more than five hours
8 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
9 work for a full five hours, its meal break obligation is triggered.").

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
12 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
written agreement to an on-duty meal period if circumstances permit.
Failure to do one of these will render the employer liable for premium pay.

13 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
14 require employees to sign meal period waivers simultaneously at or near their time of hire (as
15 opposed to on a specific work day) renders them invalid and unenforceable, because
16 Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal
17 periods did not arise until Defendants had employed them for a full five (5) hours.

18 82. Defendants knew or should have known that as a result of their company-wide
19 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
20 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
21 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
22 Employees meal period premiums when meal periods were missed, late, short, and/or
23 interrupted.

24 83. Defendants have also engaged in a company-wide practice and/or policy of not
25 paying all meal period premiums owed when compliant meal periods are not provided. Because
26 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
27 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent
28 that Defendants did pay other non-party Aggrieved Employees premium pay for missed, late,

1 and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at
2 the correct rate of pay for premiums because Defendants systematically failed to include all
3 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
4 remuneration, in the regular rate of pay.

5 84. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
6 Employees compliant meal periods and failed to pay the full meal period premiums due.
7 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
8 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
9 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
10 (f), and (g).

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
12 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

13 85. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
15 non-party Aggrieved Employees' employment by Defendants.

16 86. At all relevant times, the applicable IWC Wage Order provides that "[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period" and that the "rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof" unless the total daily work time is less than three and one-half
21 (3 ½) hours.

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

1 257, 269-270 (2016).

2 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
3 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
4 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
5 required rest period was not authorized and permitted.

6 89. During the relevant time period, Defendants regularly failed to authorize and
7 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
8 per each four (4) hour period worked or major fraction thereof. Defendants' company-wide
9 policies and/or practices of assigning heavy workloads and demanding employees complete all
10 assigned tasks within strict deadlines, prevented Plaintiff and other non-party Aggrieved
11 Employees from being relieved of all duty to take compliant rest periods. In addition,
12 Defendants did not staff sufficient employees to provide rest period coverage to Plaintiff and
13 other non-party Aggrieved Employees. Moreover, Defendants have, on a company-wide basis,
14 failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest
15 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized
16 and permitted to take compliant rest periods.

17 90. Furthermore, during the relevant time period, Defendants maintained and
18 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
19 and/or other non-party Aggrieved Employees remain on the work premises during their rest
20 periods. Because Plaintiff and/or other non-party Aggrieved Employees were restricted from
21 leaving the premises during rest periods, they were denied the ability to use their rest periods
22 freely for their own purposes, such as running personal errands. Thus, Defendants effectively
23 maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest
24 periods.

25 91. As a result of Defendants' practices and policies, Plaintiff and other non-party
26 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
27 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
28 periods as they were entitled. For example, when Plaintiff was making deliveries and driving,

1 she missed her rest periods entirely due to the lack of rest period coverage, and when she was
2 working on the dock, she missed her rest periods at least 4 to 5 days per week due to the lack of
3 rest period coverage. Further, during the remaining 1 to 2 days per workweek that she received
4 any rest periods, her rest periods were interrupted and cut-short because she was required to
5 remain on the dock to attend to trucks that were loading/unloading and other work-related
6 issues. Plaintiff also never received a third rest period despite working shifts in excess of 10
7 hours.

8 92. Defendants also engaged in a company-wide practice and/or policy of not paying
9 all rest period premiums owed when compliant rest periods are not authorized and permitted.
10 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
11 not received premium pay for all missed rest periods. Alternatively, to the extent that
12 Defendants did pay other non-party Aggrieved Employees one (1) additional hour of premium
13 pay for missed rest periods, Defendants did not pay other non-party Aggrieved Employees at the
14 correct rate of pay for premiums because Defendants failed to include all forms of
15 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
16 remuneration, in the regular rate of pay.

17 93. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
19 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
20 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
22 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

23 94. At all relevant times herein, California Labor Code section 226(a) provides that
24 every employer shall furnish each of his or her employees an accurate and complete itemized
25 wage statement in writing, including, but not limited to, the name and address of the legal entity
26 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
27 rates of pay.

28 95. During the relevant time period, Defendants have knowingly and intentionally

1 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
2 inaccurate wage statements. For example, Defendants issued uniform wage statements to
3 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
4 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the
5 pay period, including rates of pay for overtime wages and/or meal and rest period premiums,
6 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
7 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

18 97. Additionally, because Defendants did not calculate other non-party Aggrieved
19 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
20 and rest period premiums, Defendants did not list the correct amount of gross wages in
21 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
22 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly
23 list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
24 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

25 98. The wage statement deficiencies also include, among other things, failing to list
26 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
27 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
28 the last four digits of his or her social security number or an employee identification number

1 other than a social security number; failing to list the name and address of the legal entity that is
2 the employer; failing to list the inclusive dates of the period for which aggrieved employees
3 were paid; and/or failing to state all hours worked as a result of not recording or stating the
4 hours they worked off-the-clock.

5 99. California Labor Code section 1174(d) provides that “[e]very person employing
6 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
7 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
12 civil penalty if they fail to maintain accurate and complete records as required by section
13 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
14 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
15 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
16 result of failing to record the off-the-clock hours that they worked.

17 100. California Labor Code section 1198 provides that the maximum hours of work
18 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
19 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
20 of any employees for longer hours than those fixed by the order or under conditions of labor
21 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
22 are required to keep accurate time records showing when the employee begins and ends each
23 work period and meal period. During the relevant time period, Defendants failed, on a
24 company-wide basis, to keep accurate records of work period and meal period start and stop
25 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As
26 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s
27 and other non-party Aggrieved Employees’ time records by recording that compliant meal
28 periods were taken regardless of if or when meal periods were actually taken, and thereby failed

1 to keep accurate records of meal period start and end times for Plaintiff and other non-party
2 Aggrieved Employees. Furthermore, in light of Defendants' failure to provide Plaintiff and
3 other non-party Aggrieved Employees with second 30-minute meal periods to which they were
4 entitled, Defendants kept no records of start and end times for second meal periods.

5 101. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198.
6 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

9 **VIOLATION OF LABOR CODE SECTION 204**

10 102. At all relevant times herein set forth, California Labor Code section 204 requires
11 that all wages earned by any person in any employment between the 1st and the 15th days,
12 inclusive, of any calendar month, other than those wages due upon termination of an employee,
13 are due and payable between the 16th and the 26th day of the month during which the labor was
14 performed. Labor Code section 204 further provides that all wages earned by any person in any
15 employment between the 16th and the last day, inclusive, of any calendar month, other than
16 those wages due upon termination of an employee, are due and payable between the 1st and the
17 10th day of the following month.

18 103. At all relevant times herein, California Labor Code section 204 also requires that
19 all wages earned for labor in excess of the normal work period shall be paid no later than the
20 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
21 Code section 204 provides that the requirements of this section are deemed satisfied by the
22 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
23 than seven (7) calendar days following the close of the payroll period.

24 104. During the relevant time period, Defendants willfully failed to pay Plaintiff and
25 other non-party Aggrieved Employees all wages due to them within any time period specified
26 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
27 wages, meal and rest period premiums, and/or reporting time pay.

28 105. Plaintiff and other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES UPON TERMINATION**

3 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

4 106. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
5 that if an employer discharges an employee, the wages earned and unpaid at the time of
6 discharge are due and payable immediately, and that if an employee voluntarily leaves his or her
7 employment, his or her wages shall become due and payable not later than seventy-two (72)
8 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or
9 her intention to quit, in which case the employee is entitled to his or her wages at the time of
10 quitting.

11 107. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
12 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
13 above, including but not limited to, overtime wages, minimum wages, meal and rest period
14 premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72)
15 hours of their leaving Defendants' employ.

16 108. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
17 who are no longer employed by Defendants their wages earned and unpaid at the time of
18 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
19 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
20 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
21 (g).

22 **UNLAWFUL DISCOUNT OF WAGES**

23 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

24 109. California Labor Code section 212 prohibits employers from issuing any
25 instruments for the payment of wages unless such instruments are negotiable and payable in
26 cash on demand and without discount, at some established place of business in the state, the
27 name and address of which must appear on the instrument. California Labor Code section 212
28 further prohibits employers from issuing payment of wages due in the form of any scrip,

coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

110. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

111. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment.

Johnson v. Sunrise Senior Living Management, Inc., No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

112. In addition, California law only permits employers to utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted California Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

. . . (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

113. Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from

1 imposing conditions or obstacles which interfere with or prevent an
2 employee's (*sic*) from promptly receiving their due wages *in full*. The
3 imposition of a fee in order to readily *access* one's earned and paid wage
4 under a payroll card program which is designed to discharge the
5 employer's wage payment obligations could impermissibly interfere with
6 an employee's receipt of wage wages by creating a financial condition
7 which would have the *effect* of reducing or discounting wages because
8 such fee would be charged against the same account in which wages are
9 deposited." (Emphases in original)

10 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
11 providers "effectively act as *agents* of the client employers in discharging the employer's wage
12 payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the Labor
13 Code does not purport to regulate the specific arrangements between employers and payroll
14 service providers, both an employer and, under the express language in Labor Code § 212- their
15 *agent*, must comply with its requirements." *DLSE opinion letter* 2008.07.07.2.

16 114. During the relevant time period, Defendants had an agreement with a payroll
17 service provider for the issuance of payroll cards to employees, including Plaintiff and other
18 non-party Aggrieved Employees, to discharge their wage payment obligations to their
19 employees. Under Defendants' payroll debit program, on information and belief, Defendant
20 did not permit other non-party Aggrieved Employees to withdraw their entire wages in at least
21 one transaction without incurring a fee. Additionally, on information and belief, other non-
22 party Aggrieved Employees also encountered approximately \$2.00-\$3.00 in ATM fees each
23 time they utilized an ATM to withdraw funds from their payroll debit card in addition to a
24 multitude of other transaction fees that Defendants did not disclose or properly inform other
25 non-party Aggrieved Employees of at the time of issuance of payroll cards, including but not
26 limited to: card replacement fees of approximately \$5-\$25; inactivity fees of approximately \$2
27 per month; foreign transaction fees of approximately 3% of transaction amount; and out-of-
28 network and international ATM balance inquiry fees of approximately \$1, among other
undisclosed fees. Consequently, these undisclosed payroll debit card fees resulted in a
discount in pay to other non-party Aggrieved Employees. In sum, Defendants' payroll debit
card program presented a number of obstacles and hurdles that combined, made it difficult for
other non-party Aggrieved Employees to access their entire wages without discount and

1 without delay.

2 115. California courts recognize a policy favoring the full and prompt payment of
3 wages to employees. Defendants' payroll card program denies aggrieved employees of easy
4 access to the entirety of their wages, thus, the program violates California Labor Code
5 sections 212 and 213. Other non-party Aggrieved Employees are therefore entitled to recover
6 civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

7 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

8 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

9 116. At all times relevant herein, California Labor Code section 221 provides that it
10 shall be unlawful for any employer to collect or receive from an employee any part of wages
11 theretofore paid by said employer to said employee. California Labor Code section 224 also
12 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
13 deduction is expressly authorized in writing by the employee."

14 117. During the relevant time period, Defendants unlawfully deducted a portion of
15 wages previously paid to other non-party Aggrieved Employees in violation of California
16 Labor Code section 221. Defendants systematically, and on a company-wide basis, provided
17 other non-party Aggrieved Employees with payroll debit cards as payment of as payment of
18 their wages and/or final wages. Under Defendants' payroll debit card program, other non-
19 party Aggrieved Employees were assessed numerous, various fees in connection with their use
20 of the payroll debit cards. Other non-party Aggrieved Employees were required to pay per-
21 transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their
22 earned and due wages. The fees charged to other non-party Aggrieved Employees resulted in
23 a discount of their wages.

24 118. Defendants' payroll debit card program, which resulted in a discount of wages
25 to employees, is tantamount to taking deductions from other non-party Aggrieved Employees'
26 paychecks without their written authorization and therefore constitutes an unlawful deduction
27 of wages, in violation of Labor Code sections 221 and 224. Other non-party Aggrieved
28 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections

225.5 and/or 2699(a), (f), and (g).

SECRET PAYMENT OF A LOWER WAGE

VIOLATION OF LABOR CODE SECTION 223

119. At all times, California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

120. During the relevant time period, Defendants willfully and systematically issued payroll debit cards to other non-party Aggrieved Employees. The payroll debit cards discounted the wages of other non-party Aggrieved Employees by charging a multitude of various fees in connection with the use of the payroll debit cards. Defendants' payroll debit card program resulted in the payment of less than statutorily required wages to other non-party Aggrieved Employees. In doing so, Defendants acted with the intent to deprive other non-party Aggrieved Employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, Defendants paid other non-party Aggrieved Employees lower wages than those they were entitled to while purporting that other non-party Aggrieved Employees were properly paid.

121. Defendants' failure to pay other non-party Aggrieved Employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION

VIOLATION OF LABOR CODE SECTION 222.5

122. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

123. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own

1 expense. As stated, Defendants had a company-wide policy requiring that other non-party
2 Aggrieved Employees travel to a specified medical facility on their own time and use their
3 own means of transportation to undergo drug testing and/or physical examinations. At all
4 times, Defendants were in control of scheduling the date and time for the testing and/or
5 examinations, selecting the provider/facility where the testing and/or examinations were to
6 take place, and determining the scope of the testing and/or examinations.

7 124. However, Defendants did not compensate other non-party Aggrieved
8 Employees for the time they spent traveling to and from the medical facilities, for the time
9 they spent undergoing the drug testing and/or physical examinations, or reimburse them for
10 the travel expenses they incurred getting to and from the medical facilities. Defendants'
11 policy and/or practice of not paying for all costs other non-party Aggrieved Employees
12 incurred obtaining mandatory drug testing and/or physical examinations is in violation of
13 California Labor Code section 222.5.

14 125. Other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

16 **FAILURE TO PAY REPORTING TIME PAY**

17 **VIOLATION OF LABOR CODE SECTION 1198**

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

23 127. California Code of Regulations, Title 8, section 11050(5)(A) provides that
24 “[e]ach workday an employee is required to report for work and does report, but is not put to
25 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
26 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
27 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less
28 than the minimum wage.” The “primary purpose of the reporting time regulation” is “to

1 guarantee at least partial compensation for employees who report to work expecting to work a
2 specified number of hours, and who are deprived of that amount because of inadequate
3 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
4 App. 4th 556 (2012).

5 128. Upon information and belief, Defendants violated California Labor Code section
6 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants
7 failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they
8 reported to work for their scheduled shift but were put to work for less than half of the regular
9 schedule.

10 129. Defendants had a company-wide practice of sending Plaintiff and other non-party
11 Aggrieved Employees home early from their shifts, including before they had worked at least
12 half of their regular shift, but would not pay Plaintiff and other non-party Aggrieved Employees
13 for half of their scheduled shift. For example, at least twice during the relevant time period,
14 Plaintiff reported to work for her scheduled shift, but was told to go home 2-2.5 hours into her
15 shift because the trucks had finished loading early. Although Plaintiff and other non-party
16 Aggrieved Employees would report to work based on the schedule that Defendants provided to
17 them, Defendants would send them home before they had worked at least half of their scheduled
18 shifts without giving them reporting time pay and/or pay for at least half their scheduled shift.
19 Accordingly, Plaintiff and other non-party Aggrieved Employees were not properly
20 compensated with reporting time pay in violation of California Labor Code section 1198 and
21 California Code of Regulations, Title 8, section 11050(5).

22 130. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

25 **VIOLATION OF LABOR CODE SECTION 2802**

26 131. At all times herein set forth, California Labor Code section 2802 provides that an
27 employer must reimburse employees for all necessary expenditures and losses incurred by the
28 employee in the performance of his or her job. The purpose of Labor Code section 2802 is to

1 prevent employers from passing off their cost of doing business and operating expenses on to
2 their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the
4 employer requires the use of tools or equipment or they are necessary to the performance of a
5 job, such tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage may provide and maintain
7 hand tools and equipment customarily required by the particular trade or craft."

8 132. First, during the relevant time period, Defendants, on a company-wide basis,
9 required that Plaintiff and other non-party Aggrieved Employees use their own personal cellular
10 phones and/or cellular data to carry out their job duties but failed to reimburse them for the costs
11 of their work-related cellular phone expenses. Although Defendants issued company cell
12 phones to some employees, they did not provide them with a sufficient number of company
13 phones and phones that were provided, were inadequate and did not operate properly. For
14 example, Plaintiff and other non-party Aggrieved Employees were required to use their
15 personnel cellular phones to communicate with managers about various work-related matters
16 and with school personnel for whom they were making deliveries for. Plaintiff and other non-
17 party Aggrieved Employees further used their personal cellular phone data and navigation apps
18 to locate the various client sites during their deliveries. Plaintiff and other non-party Aggrieved
19 Employees were further contacted on their personal cellular phones off-the-clock during their
20 off-days by their managers regarding various work-related matters. As a result, Plaintiff
21 frequently used her personal cellular phone during her scheduled shifts and about 3.5 to 4.5
22 hours per day off-the-clock reviewing and responding to calls and text messages from her
23 managers prior to and after her scheduled shifts. Although Defendants required Plaintiff and
24 other non-party Aggrieved Employees to utilize their personal cellular phones to carry out their
25 work-related responsibilities, Defendants failed to fully reimburse them for this cost.

26 133. Second, during the relevant period, Defendants had, and continue to have, a
27 company-wide policy of requiring Plaintiff and other non-party Aggrieved Employees to travel
28 in their own personal vehicles for Defendants' business-purposes but failed to reimburse them

1 for all costs of travel, including mileage. For example, as stated, Plaintiff was required to use
2 her personal vehicle to run company errands, such as purchasing ingredients on her way to
3 work, adding approximately eight (8) miles to her commute, and making deliveries to clients'
4 sites after her shift ended, but Plaintiff was not reimbursed for her travel expenses or mileage.
5 Further, as stated, on information and belief, other non-party Aggrieved Employees were
6 required to use their personal vehicles to complete mandatory road tests and/or driving trainings,
7 but were not compensated for their mileage. Although Defendants required Plaintiff and other
8 non-party Aggrieved Employees to utilize their personal vehicles to carry out their work-related
9 responsibilities, Defendants failed to reimburse them for their mileage expenses and costs.

10 134. Third, during the relevant time period, as stated Defendants had a company-wide
11 policy of requiring other non-party Aggrieved Employees to travel to medical facilities on their
12 own time and using their personal vehicles to obtain mandatory drug testing and/or physical
13 examinations, but did not reimburse them for their travel expenses, including mileage. At all
14 times, Defendants were in control of scheduling the date and time for the testing and/or physical
15 examinations, selecting the provider or facility where the testing and/or physical examinations
16 were to take place, and determining the scope of the testing and/or physical examinations.
17 Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug testing
18 and/or physical examinations, and other non-party Aggrieved Employees underwent the testing
19 and/or physical examinations for the sole benefit of Defendants. Although Defendants required
20 other non-party Aggrieved Employees to use their own vehicles or obtain alternate
21 transportation to undergo drug testing and/or physical examinations, Defendants never
22 reimbursed them for their travel expenses.

23 135. Fourth, during the relevant time period, Defendants, on a company-wide basis,
24 required Plaintiff and other non-party Aggrieved Employees to purchase supplies, tools, and/or
25 safety equipment that were necessary for the completion of their work-related duties. For
26 example, during the relevant period, Plaintiff purchased tie-downs for \$8 each, markers for \$5
27 and pens for \$3, in order to be able to carry out her work duties. In addition, other non-party
28 Aggrieved Employees purchased safety equipment, such as steel-toed boots, because

1 Defendants “strongly recommended” employees to wear them at work. Thus, Defendants failed
2 to provide supplies, tools, and/or safety equipment to Plaintiff and other non-party Aggrieved
3 Employees, forcing them to procure their own, and failed to reimburse Plaintiff and other non-
4 party Aggrieved Employees for these costs.

5 136. Fifth, Defendant, on a company-wide basis, expected Plaintiff and other non-
6 party Aggrieved Employees to report to work in clean and presentable uniforms, including a
7 black polo shirt emblazoned with Defendants’ logo. However, Defendants did not provide their
8 employees with sufficient uniform shirts to wear for their shifts throughout the week. For
9 example, Defendants only provided Plaintiff and other non-party Aggrieved Employees with
10 three (3) company polo shirts at the beginning of their employment. Because Defendants failed
11 to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
12 uniform shirts in relation to their scheduled shifts, Plaintiff and other non-party Aggrieved
13 Employees had to wash their company shirts more frequently than they would otherwise do
14 laundry, and incurred expenses in doing so. For example, because Plaintiff typically worked 5
15 to 6 days a week and was mostly outdoors throughout her shift, her uniform shirts would
16 become stained, sweaty, and/or soiled. Further, due to concerns about sanitary issues
17 particularly during the COVID-19 pandemic, Plaintiff and other non-party Aggrieved
18 Employees were forced to launder their uniform items separately from their regular clothes,
19 and/or more frequently than other clothing items, thus incurring additional laundering costs for
20 the upkeep of their uniforms. Therefore, Defendants failed to maintain uniforms it required
21 Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them
22 to incur the cost of maintaining employee uniforms.

23 137. Sixth, on information and belief, Defendants, on a company-wide basis, required
24 other non-party Aggrieved Employees to obtain and pay for certain trainings and certificates,
25 such as an Entry-Level Driving Training Certificate that were required for their continued
26 employment. Although Defendants had a uniform policy of requiring employees to obtain
27 driving trainings and certificates, on information and belief, Defendants did not reimburse them
28 for the costs of the trainings and/or certificates.

1 138. Defendants could have provided Plaintiff and other non-party Aggrieved
2 Employees with the actual tools for use on the job, such as company phones; company vehicles;
3 necessary supplies, tools, and safety equipment; and an adequate number of uniform items
4 and/or access to laundering services. Or, Defendants could have reimbursed employees for the
5 costs of their cellular phone usage; mileage; travel expenses; tools, supplies, and safety
6 equipment expenses; laundering expenses or a uniform maintenance allowance; and license and
7 training fees. Instead, Defendants passed these operating costs off onto Plaintiff and other non-
8 party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times
9 the minimum wage.

10 139. Defendants' company-wide policy and/or practice of passing on their operating
11 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
12 section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

15 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

16 140. At all relevant times herein, California Labor Code section 6401 provides that
17 employers must furnish and use safety devices and safeguards, and adopt and use practices,
18 means, methods, operations, and processes which are reasonably adequate to render the
19 employment and place of employment safe and healthy. California Labor Code Section 6401
20 further provides that an employer must do everything reasonably necessary to protect the life,
21 safety and health of its employees.

22 141. Defendants, on a company-wide basis, failed to provide other non-party
23 Aggrieved Employees with personal protective equipment, such as steel-toed boots, to keep
24 them safe in the workplace. Despite the fact that Defendants "strongly recommended" per
25 their Employee Uniform Guidelines that employees wear certain protective equipment,
26 including steel-toed boots, Defendants failed to provide such reasonably necessary equipment
27 to other non-party Aggrieved Employees to keep them safe. Thus, Defendants' failure to
28 provide other non-party Aggrieved Employees with safety devices and safeguards violates

1 Labor Code sections 6401 and 6403.

2 142. Other non-party Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **REQUEST FOR JURY TRIAL**

5 Plaintiff requests a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
8 judgment against Defendants, jointly and severally, as follows:

9 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
10 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
11 amount.

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

13 2. That the Court declare, adjudge and decree that Defendants violated the
14 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
15 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
16 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
17 1198, (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
18 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
19 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
20 earned wages upon termination); 204 (by failing to timely pay all earned wages during
21 employment); 212 and 213 (by failing to make earned wages accessible without discount);
22 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying
23 wages lower than required by statute); 222.5 (by failing to pay the costs of mandatory drug
24 testing and/or physical examinations); 1198 and the applicable IWC Wage Order (by failing to
25 provide reporting time pay); 2802 (by failing to reimburse business expenses); and 6401 and
26 6403 (by failing to provide safety devices and safeguards);

27 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
28 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections

201, 202, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401 and 6403;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401 and 6403;

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

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

Dated: September 24, 2021

Respectfully submitted,

Capstone Law APC

By: 

Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiff Christina White

EXHIBIT “1”

HELGA HAKIMI
310.712.8036 Direct
Helga.Hakimi@capstonelawyers.com

July 20, 2021

VIA ONLINE SUBMISSION

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

Subject: *Christina White v. Revolution Foods, Inc.*

Dear PAGA Administrator:

This office represents Christina White in connection with her claims under the California Labor Code. Ms. White was an employee of REVOLUTION FOODS, INC. ("REVOLUTION").

The employer may be contacted directly at the address below:

REVOLUTION FOODS, INC.
985 3RD ST.
OAKLAND CA 94607

Ms. White intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. White seeks relief on behalf of herself, the State of California, and other persons who are or were employed by REVOLUTION as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

REVOLUTION employed Ms. White as an hourly paid, non-exempt employee from approximately January 2019 to September 2020. Ms. White worked for REVOLUTION at its location in San Lorenzo, California as a Delivery Driver when she was hired in January 2019 and as a Dispatch Supervisor from February 2020 until her employment ended in September 2020. During her employment, Ms. White typically worked eight (8) to twelve (12) hours or more per day, five (5) to six (6) days per week. Ms. White was compensated approximately \$23.00 per hour at the end of her employment. As a Delivery Driver, Ms. White's job duties included, without limitation, delivering meals to local schools and unloading products, verifying delivery plans and routes, conducting vehicle pre-check inspections, and managing packing slips; while as a Dispatch Supervisor, Ms. White's job duties included, without limitation, assisting with loading trucks at the docks, monitoring and inspecting meals, communicating with drivers regarding deliveries and routes, and continuing

her duties as a Delivery Driver by covering routes for other drivers, which she did approximately 80% of the time.

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

REVOLUTION’S Company-Wide and Uniform Payroll and HR Practices

REVOLUTION FOODS, INC. is a Delaware corporation with its principal place of business in Oakland, California. REVOLUTION creates and delivers prepacked health-focused meals to underserved schools and communities and operates approximately 3 to 4 locations in Alameda and Los Angeles Counties. Upon information and belief, REVOLUTION maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Oakland, California, for all non-exempt, hourly paid employees working for REVOLUTION in California, including Ms. White and other aggrieved employees. At all relevant times, REVOLUTION issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. White and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. White’s experience and counsel’s review of those records currently available relating to Ms. White’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. White reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

REVOLUTION willfully failed to pay all overtime wages owed to Ms. White and other aggrieved employees. During the relevant time period, Ms. White and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, REVOLUTION had, and continues to have, a company-wide policy of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting, combined with the assignment of heavy workloads, strict deadlines, and single-staffing particularly during graveyard shifts, has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, REVOLUTION has a practice of failing to schedule and/or adhere to a schedule of meal periods, which further caused Ms. White and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. White and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Second, because REVOLUTION frowned upon Ms. White and other aggrieved employees accruing meal period penalties, REVOLUTION's management pressured Ms. White and other aggrieved employees to clock out for meal periods but continue working through their meal period, in order to reflect compliant meal periods and limit the meal penalties that REVOLUTION would otherwise owe. For example, Ms. White was pressured to clock out for her meal periods but continue to work at least twice per week while working on the dock and/or forego her meal periods entirely each day that she had to drive, forcing her to eat her meals while driving. Similarly, during the relevant time period, Ms. White's meal periods were cut short and interrupted at least 2 to 3 times per week by other managers calling her cellular phone during meal periods to inquire about work-related matters.

Third, during the relevant period, REVOLUTION had, and continues to have, a company-wide policy of discouraging and impeding Ms. White and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline, in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with REVOLUTION's use of labor budgets and assignment of heavy workloads, led Ms. White and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. White spent approximately 15 to 30 minutes every day responding to numerous phone calls and/or text messages from REVOLUTION's managers before her scheduled shift regarding the tasks and duties to be completed for that day, but was not compensated for this time. REVOLUTION's managers also required Ms. White and other aggrieved employees to purchase ingredients and food products on their way to work; on at least three (3) occasions, Ms. White spent approximately 20 minutes doing so but was not compensated for this time. Further, because management discouraged Ms. White and other aggrieved employees from clocking in prior to their scheduled shift start-times, Ms. White was forced to report to work 15 to 60 minutes prior to her scheduled shift every day to prepare for the day's deliveries, performing tasks such as helping in the kitchen to set up food trays, meeting and assisting drivers at various client sites, cleaning the dock, counting inventory, and gathering paperwork for delivery routes, but was not permitted to record this time she spent working. Finally, on information and belief, prior to the start of each shift and before clocking in, other aggrieved employees would have to wait for and undergo mandatory COVID-19 health screenings, including temperature checks, conducted by Quality Control personnel, and were not compensated for this off-the-clock time.

REVOLUTION's company-wide practices and policies to discourage and limit overtime accrual, also led Ms. White and other aggrieved employees to perform work-related duties after they clocked out at their scheduled shift end-times. For example, as a Driver, Ms. White was required to make deliveries after her shifts approximately 1 to 3 times per week for about 3 months, and she spent 30 minutes and up to 2 hours doing so. Moreover, as a Dispatch Supervisor, approximately 3 to 4 times per week, Ms. White was forced to report back to the dock after she had clocked out at the end of her scheduled shift to complete her duties and/or assist her coworkers with tasks. Ms. White spent up to 20 to 90 minutes per instance but was not compensated for this time. Further, Ms. White was inundated with work-related group text messages and phone calls initiated by her managers regarding work-related matters after each scheduled shift and she spent 30 minutes each day off-the-clock reviewing and responding to these numerous phone messages. Finally, on information and belief, REVOLUTION required other aggrieved employees to complete mandatory road tests and/or driving trainings outside of their scheduled shifts, but did not compensate them for this time. REVOLUTION could have recorded this off-the-clock work, but refused to do so to avoid paying Ms. White and other aggrieved employees overtime wages.

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

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

Specifically, REVOLUTION paid Ms. White and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. White's and/or other aggrieved employees' wage statements as "Bonus". During pay periods that other aggrieved employees were paid overtime wages, REVOLUTION did not incorporate the nondiscretionary bonuses and/or incentive pay into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, REVOLUTION paid other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. REVOLUTION's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to other aggrieved employees on a company-wide basis.

REVOLUTION's failure to pay Ms. White 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. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, as set forth above, due to REVOLUTION’s company-wide practice of utilizing labor budgets, assignment of heavy workloads coupled with the expectation that Ms. White and other aggrieved employees complete all of their assigned tasks within strict deadlines, policy of single-staffing certain shifts (particularly graveyard shifts), and subsequent lack of meal period coverage, impeded Ms. White and other aggrieved employees from taking all uninterrupted meal periods to which they were entitled and forced Ms. White and other aggrieved employees to work off-the-clock. Moreover, due to REVOLUTION’s policies and/or practices of understaffing while assigning heavy workloads, and failing to schedule and/or adhere to a schedule of meal periods, Ms. White and other aggrieved employees were forced to forego meal periods entirely, have their meal periods interrupted and cut short, and/or were otherwise not relieved of all duties during meal periods. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, REVOLUTION’s management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Second, as stated above, during the relevant time period, as a result of REVOLUTION’s policy of limiting the amount of overtime employees could accrue, Ms. White and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their work-related tasks. As stated, REVOLUTION required Ms. White and other aggrieved employees to perform work off-the-clock, including performing pre- and post-shift work such as: meeting and assisting drivers at various sites prior to clocking in for their shift; reporting to the warehouse to assist the kitchen staff with packaging food prior to clocking in for their shift; cleaning the dock, counting inventory and gathering paperwork for delivery routes off-the-clock; making deliveries and running company errands off-the-clock; responding to phone calls and/or text messages from managers regarding various work-related matters off-the-clock; submitting to off-the-clock mandatory COVID-19 screenings and/or temperature checks; and taking mandatory road tests and driving trainings off-the-clock. Due to REVOLUTION’s company-wide practices and policies to discourage and limit the amount of overtime employees could accrue, Ms. White and other aggrieved employees would get reprimanded and threatened with discipline and/or termination by management if they reported this off-the-clock work outside of their scheduled shift times.

Third, REVOLUTION maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, REVOLUTION was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. REVOLUTION gave other aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole

benefit of REVOLUTION. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing REVOLUTION's mandatory drug tests and/or physical examinations. REVOLUTION did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and completing the mandatory drug testing and/or physical examinations.

Thus, REVOLUTION did not pay at least minimum wages for all hours worked by Ms. White and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, REVOLUTION did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, REVOLUTION regularly failed to pay at least minimum wages to Ms. White and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, REVOLUTION had, and continues to have, company-wide policies and/or practices of understaffing locations, including single-staffing certain shifts, due to labor budgeting and/or limited payroll allocation, and failing to schedule and/or adhere to a schedule of meal periods, which resulted in a lack of meal period coverage and prevented Ms. White and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. These company-wide practices, coupled with the heavy workload and pressure from REVOLUTION that employees complete assigned tasks within strict deadlines, impeded Ms. White and other aggrieved employees from taking timely, uninterrupted and compliant meal periods. As a result, Ms. White and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, Ms. White took her meal period after the sixth or seventh hour of her scheduled shift on days that she had to drive delivery routes, and on days when Ms. White was

working on the dock, she took her meal period late after the sixth hour of her scheduled shift at least 2 to 3 times per week.

As another example, because Ms. White was often the only driver during graveyard shifts, she was prevented from taking timely, uninterrupted 30-minute meal periods and was forced to work through her meal period entirely and eat her meals while driving. In addition, as stated, when Ms. White was working on the dock (and not required to drive and/or cover other drivers' routes), she was forced to work through her meal periods at least twice per week due to the lack of meal period coverage and heavy workload assignments. In addition, as stated, Ms. White and other aggrieved employees would have their meal periods interrupted and/or cut short at least 2 to 3 times per week due to a lack of coverage and to attend to their managers' work-related inquiries.

Further, as stated, because REVOLUTION frowned upon Ms. White and other aggrieved employees accruing meal period penalties, REVOLUTION's management pressured Ms. White and other aggrieved employees to clock out for meal periods and/or falsified or altered employees' time records, in order to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that REVOLUTION would otherwise owe.

Moreover, REVOLUTION did not provide Ms. White and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, as stated, on at least one occasion, Ms. White worked in excess of 10 hours and was only provided with one meal period and did not receive any meal period penalties. Ms. White and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Furthermore, REVOLUTION had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. REVOLUTION took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, REVOLUTION's "Meal Period Waiver" form provides that the meal period waiver remains in effect until the employee provides "at least one day's notice to Leticia Rubalcava in Human Resources at LRubalcava@revolutionfoods.com" and presumably in writing since the revocation must be expressly stated in an e-mail. REVOLUTION's presumption that first meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, and second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers, and imposition on employees to revoke the waivers in writing by e-mail to Human Resources personnel, discouraged and impeded Ms. White and other aggrieved employees from taking all second meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written

agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That REVOLUTION requires employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because REVOLUTION's obligation to provide Ms. White and other aggrieved employees with meal periods did not arise until REVOLUTION had employed them for a full five (5) hours.

REVOLUTION knew or should have known that as a result of its company-wide policies and/or practices, Ms. White and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. REVOLUTION further knew or should have known that it did not pay Ms. White and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, REVOLUTION engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. White and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that REVOLUTION did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, REVOLUTION did not pay other aggrieved employees at the correct rate of pay for premiums because REVOLUTION systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, REVOLUTION failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. White and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, REVOLUTION regularly failed to authorize and permit Ms. White and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. REVOLUTION's company-wide policies and/or practices of assigning heavy workloads and demanding employees complete all assigned tasks within strict deadlines, prevented Ms. White and other aggrieved employees from being relieved of all duty to take compliant rest periods. In addition, REVOLUTION did not staff sufficient employees to provide rest period coverage to Ms. White and other aggrieved employees. Moreover, REVOLUTION has, on a company-wide basis, failed to schedule rest periods, which, coupled with REVOLUTION's failure to provide adequate rest coverage, further led to Ms. White and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, during the relevant time period, REVOLUTION maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. White and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. White and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, REVOLUTION effectively maintained control over Ms. White and/or other aggrieved employees during rest periods.

As a result of REVOLUTION's practices and policies, Ms. White and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, when Ms. White was making deliveries and driving, she missed her rest periods entirely due to the lack of rest period coverage, and when she was working on the dock, she missed her rest periods at least 4 to 5 days per week due to the lack of rest period coverage. Further, during the remaining 1 to 2 days per workweek that she received any rest periods, her rest periods were interrupted and cut-short because she was required to remain on the dock to attend to trucks that were loading/unloading and other work-related issues. Ms. White also never received a third rest period despite working shifts in excess of 10 hours.

REVOLUTION also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. White and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that REVOLUTION did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, REVOLUTION did not pay other aggrieved employees at the correct rate of pay for premiums because REVOLUTION failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, REVOLUTION failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. White and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. REVOLUTION has not provided Ms. White and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, REVOLUTION has knowingly and intentionally provided Ms. White and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, REVOLUTION issued uniform wage statements to Ms. White and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, REVOLUTION violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because REVOLUTION did not record the time Ms. White and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), REVOLUTION did not list the correct amount of gross wages and net wages earned by Ms. White and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, REVOLUTION failed to accurately list the total number of hours worked by Ms. White and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because REVOLUTION did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and meal and rest period premiums, REVOLUTION did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). REVOLUTION also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime and meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), REVOLUTION willfully failed to maintain accurate payroll records for Ms. White and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, REVOLUTION failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. White and other aggrieved employees, in violation of section 1198. Also, as stated, REVOLUTION engaged in a company-wide practice and/or policy of falsifying Ms. White’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. White and other aggrieved employees. Furthermore, in light of REVOLUTION’s failure to provide Ms. White and other aggrieved employees with second 30-minute meal periods to which they were entitled, REVOLUTION kept no records of meal start and end times for second meal periods.

Because REVOLUTION failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. White and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. White and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, REVOLUTION failed to pay Ms. White and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

REVOLUTION willfully failed to pay Ms. White and other aggrieved employees who are no longer employed by REVOLUTION all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving REVOLUTION's employ.

Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that ...

it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

During the relevant time period, REVOLUTION had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Ms. White and other aggrieved employees, to discharge its wage payment obligations to its employees. Under REVOLUTION’s payroll debit program, on information and belief, REVOLUTION did not permit other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. Additionally, on information and belief, other aggrieved employees also encountered approximately \$2.00-\$3.00 in ATM fees each time they utilized an ATM to withdraw funds from their payroll debit card in

addition to a multitude of other transaction fees that REVOLUTION did not disclose or properly inform other aggrieved employees of at the time of issuance of payroll cards, including but not limited to: card replacement fees of approximately \$5-\$25; inactivity fees of approximately \$2 per month; foreign transaction fees of approximately 3% of transaction amount; and out-of-network and international ATM balance inquiry fees of approximately \$1, among other undisclosed fees. Consequently, these undisclosed payroll debit card fees resulted in a discount in pay to other aggrieved employees. In sum, REVOLUTION's payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for other aggrieved employees to access their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. REVOLUTION's payroll card program is inconsistent with this policy. REVOLUTION's company-wide payroll debit card program denies aggrieved employees of easy access to the entirety of their wages, thus, the program violates California Labor Code sections 212 and 213. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, REVOLUTION unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221.

REVOLUTION systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under REVOLUTION's payroll debit card program, other aggrieved employees were assessed numerous, various fees in connection with their use of the payroll debit cards. Other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

REVOLUTION's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, REVOLUTION willfully and systematically issued payroll debit cards to other aggrieved employees. The payroll debit cards discounted the wages of other aggrieved employees by charging a multitude of various fees in connection with the use of the payroll debit

cards. REVOLUTION's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, REVOLUTION acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, REVOLUTION paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, REVOLUTION implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, REVOLUTION had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, REVOLUTION was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

However, REVOLUTION did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations or reimburse them for the travel expenses they incurred getting to and from the medical facilities. REVOLUTION's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)

hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

Upon information and belief, during the relevant time period, REVOLUTION violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because REVOLUTION failed to pay Ms. White and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work. REVOLUTION had a company-wide practice of sending Ms. White and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. White and other aggrieved employees for half of their scheduled shift. For example, at least twice during the relevant time period, Ms. White reported to work for her scheduled shift, but was told to go home 2-2.5 hours into her shift because the trucks had finished loading early. Although Ms. White and other aggrieved employees would report to work based on the schedule that REVOLUTION provided to them, REVOLUTION would send them home before they had worked at least half of their scheduled shifts and without giving them reporting time pay and/or pay for at least half their scheduled shift. Accordingly, Ms. White and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, REVOLUTION, on a company-wide basis, required that Ms. White and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties but failed to reimburse them for the costs of their work-related cellular phone expenses. Although REVOLUTION issued company cell phones to some employees, it did not provide them with a sufficient number of company phones and phones that were provided, were inadequate and did not operate properly. For example, Ms. White and other aggrieved employees were required to use their personal cellular phones to communicate with managers about various work-related matters and with school personnel for whom they were making deliveries for. Ms. White and other aggrieved employees further used their personal cellular phone data and navigation apps to locate the various client sites during their deliveries. Ms. White and other aggrieved employees were further contacted on their personal cellular phones off-the-clock during their off-days by their managers regarding various work-related matters. As a result, Ms. White used her

personal cellular phone 90% of the time during her scheduled shifts and about 3.5 to 4.5 hours per day off-the-clock reviewing and responding to calls and texts from her managers prior to and after her scheduled shifts. Although REVOLUTION required Ms. White and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, REVOLUTION failed to fully reimburse them for this cost.

Second, during the relevant period, REVOLUTION had, and continues to have, a company-wide policy of requiring Ms. White and other aggrieved employees to travel in their own personal vehicles for REVOLUTION's business-purposes but failed to reimburse them for all costs of travel, including mileage. For example, as stated, Ms. White was required to use their personal vehicle to run company errands, such as purchasing ingredients on her way to work, adding approximately 8 miles to her commute, and making deliveries to clients' sites after her shift ended, but Ms. White was not reimbursed for her travel expenses or mileage. Further, as stated, on information and belief, other aggrieved employees were required to use their personal vehicles to complete mandatory road tests and/or driving trainings, but were not compensated for their mileage. Although REVOLUTION required Ms. White and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, REVOLUTION failed to reimburse them for their mileage expenses and costs.

Third, during the relevant time period, as stated REVOLUTION had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, REVOLUTION was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. REVOLUTION gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of REVOLUTION. Although REVOLUTION required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, REVOLUTION never reimbursed them for their travel expenses.

Fourth, during the relevant time period, REVOLUTION, on a company-wide basis, required Ms. White and other aggrieved employees to purchase supplies, tools, and/or safety equipment that were necessary for the completion of their work-related duties. For example, during the relevant period, Ms. White purchased tie-downs for \$8 each, markers for \$5 and pens for \$3, in order to be able to carry out her work duties. In addition, other aggrieved employees purchased safety equipment, such as steel-toed boots, because REVOLUTION "strongly recommended" employees to wear them at work. Thus, REVOLUTION failed to provide supplies, tools, and/or safety equipment to Ms. White and other aggrieved employees, forcing them to procure their own, and failed to reimburse Ms. White and other aggrieved employees for these costs.

Fifth, REVOLUTION, on a company-wide basis, expected Ms. White and other aggrieved employees to report to work in clean and presentable uniforms, including a black polo shirt emblazoned with REVOLUTION's logo. However, REVOLUTION did not provide its employees with sufficient uniform shirts to wear for their shifts throughout the week. For example, REVOLUTION only provided Ms. White and other aggrieved employee with three (3) company polo shirts at the beginning of their employment. Because REVOLUTION failed to provide Ms. White and other aggrieved employees with an adequate number of uniform shirts in relation to their

scheduled shifts, Ms. White and other aggrieved employees had to wash their company shirts more frequently than they would otherwise do laundry, and incurred expenses in doing so. For example, because Ms. White typically worked 5 to 6 days a week and was mostly outdoors throughout her shift, her uniform shirts would become stained, sweaty, and/or soiled. Further, due to concerns about sanitary issues particularly during the COVID-19 pandemic, Ms. White and other aggrieved employees were forced to launder their uniform items separately from their regular clothes, and/or more frequently than other clothing items, thus incurring additional laundering costs for the upkeep of their uniforms. Therefore, REVOLUTION failed to maintain uniforms it required Ms. White and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Sixth, on information and belief, REVOLUTION, on a company-wide basis, required other aggrieved employees to obtain and pay for certain trainings and certificates, such as an Entry-Level Driving Training Certificate that were required for their continued employment. Although REVOLUTION had a uniform policy of requiring employees to obtain driving trainings and certificates, on information and belief, REVOLUTION did not reimburse them for the costs of the trainings and/or certificates.

REVOLUTION could have provided Ms. White and other aggrieved employees with the actual tools for use on the job, such as company phones; company vehicles; necessary supplies, tools, and safety equipment; and an adequate number of uniform items and/or access to laundering services. Or, REVOLUTION could have reimbursed employees for the costs of their cellular phone usage; mileage; travel expenses; tools, supplies, and safety equipment expenses; laundering expenses or a uniform maintenance allowance; and license and training fees. Instead, REVOLUTION passed these operating costs off onto Ms. White and other aggrieved employees. At all relevant times, Ms. White did not earn at least two (2) times the minimum wage.

Thus, REVOLUTION had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. White and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

REVOLUTION, on a company-wide basis, failed to provide other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that REVOLUTION “strongly recommended” per its Employee Uniform Guidelines that employees wear certain personal protective equipment, including steel-toed boots, REVOLUTION failed to provide such reasonably necessary equipment to other aggrieved employees to keep them safe.

REVOLUTION's failure to provide other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." REVOLUTION, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. White's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. White seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. White, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against REVOLUTION for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Ms. White seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. White's reasonable attempt to settle her dispute with REVOLUTION prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform REVOLUTION of Ms. White's aforementioned grievances and the proposed remedies as detailed below, while affording REVOLUTION a reasonable opportunity to satisfy Ms. White's demands.

Demand is hereby made that REVOLUTION shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. REVOLUTION shall pay Ms. White and all other aggrieved employees employed by REVOLUTION at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. REVOLUTION shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.

3. REVOLUTION shall conduct a survey or interview all current and former aggrieved employees in California who worked for REVOLUTION in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; the number of employees who were required to pay for cellular phone expenses; personal vehicle travel and mileage expenses; uniforms and uniform laundering expenses; tools, supplies and/or safety equipment; costs incurred to obtain required trainings or licenses; or other expenditures incurred in the discharge of their duties, with the investigation to be completed within 60 days.
4. REVOLUTION shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by California Labor Code sections 226.7, 512(a), 516, and 1198. REVOLUTION also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by California Labor Code sections 226.7, 516, and 1198.
5. REVOLUTION shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for REVOLUTION's benefit, including, but not limited to, cellular phone expenses; mileage; uniform and laundering costs; costs of tools, supplies, and safety equipment; license and training fees; or other expenditures incurred, as required by Labor Code sections 2802 and 222.5.
6. REVOLUTION shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. REVOLUTION shall provide Ms. White and all aggrieved employees employed by REVOLUTION at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. REVOLUTION shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
9. REVOLUTION shall pay each aggrieved employee wages, compensation and/or all costs incurred for REVOLUTION's payroll debit card program which violated California Labor Code sections 212 and 213 by denying aggrieved employees easy access to the entirety of their wages.
10. REVOLUTION shall pay each aggrieved employee wages, compensation and/or all costs incurred for REVOLUTION's payroll debit card program which resulted in an unlawful deduction of wages and/or discount of wages paid to other aggrieved employees in violation of California Labor Code sections 221 and 224.
11. REVOLUTION shall pay each aggrieved employee wages, compensation and/or all costs incurred for REVOLUTION's payroll debit card program which resulted in a secret

payment of lower wages paid to other aggrieved employees in violation of California Labor Code section 223.

12. REVOLUTION shall pay each aggrieved employee compensation and all costs incurred for obtaining mandatory drug testing and/or physical examinations pursuant to California Labor Code section 222.5.
13. REVOLUTION shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe pursuant to California Labor Code sections 6401 and 6403.
14. REVOLUTION shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
15. REVOLUTION shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

Helga Hakimi
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Helga Hakimi

Copy: REVOLUTION FOODS, INC. (via U.S. Certified Mail).



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:

REVOLUTION FOODS, INC.
985 3RD ST.
OAKLAND CA 94607

2. Article Number (Transfer from service label)

7020 1810 0000 4166 0873

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

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A. Signature
X ☐ Agent ☐ Addressee

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

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If YES, enter delivery address below:

3. Service Type

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one
LAW APC
1000
Park East, Ste 1000
CA 90067