

BOYAMIAN LAW, INC.

Michael H. Boyamian (SBN 256107)
Heather M. Zermeno (SBN 334460)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203-1922
Telephone: 818.547.5300
Facsimile: 818.547.5678
E-mail(s): michael@boyamianlaw.com,
heather@boyamianlaw.com

**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 21 2021

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JANE THOMAS, Deputy

CAPSTONE LAW, APC

Robert Drexler, SBN 119119
Molly A. DeSario, SBN 230763
Jonathan Lee, SBN 267146
1875 Century Park East, Suite 1000
Los Angeles, California 90067
T: (310) 556-4811 | F: 310-943-0396
E-mail: robert.drexler@capstonelawyers.com,
molly.desario@capstonelawyers.com,
jonathan.lee@capstonelawyers.com

Attorneys for Plaintiffs JONATHAN GARCIA and OSCAR MENDOZA,
Individually, and On Behalf of All Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JONATHAN GARCIA and OSCAR
MENDOZA, individually, and on behalf
of all other aggrieved employees, and the
general public,
Plaintiff,

vs.

BARNEY'S COLLEGE, INC., a
California corporation; BARNEY'S
PIEDMONT, INC., a California
Corporation; BARNEY'S SAN
FRANCISCO, INC., a California
corporation; BARNEY'S SAN
VICENTE, INC., a California
corporation; BARNEY'S SOLANO,
INC., a California corporation;
BARNEYS BRENTWOOD, INC., a
California corporation; BARNEYS
SHATTUCK, INCORPORATED., a
California corporation; BARNEY'S
STEINER, LLC, a California limited
liability company; and DOES 1 through
25, inclusive,
Defendants.

CASE NO.

RG21113350

COMPLAINT FOR:

- 1. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

Filed By Fax

1 Plaintiffs JONATHAN GARCIA and OSCAR MENDOZA, individually, and on behalf of all
2 other aggrieved employees, hereby file this Complaint (“Complaint”) against Defendants BARNEY’S
3 COLLEGE, INC., a California corporation; BARNEY’S PIEDMONT, INC., a California
4 Corporation; BARNEY’S SAN FRANCISCO, INC., a California corporation; BARNEY’S SAN
5 VICENTE, INC., a California corporation; BARNEY’S SOLANO, INC., a California corporation;
6 BARNEYS BRENTWOOD, INC., a California corporation; BARNEYS SHATTUCK,
7 INCORPORATED., a California corporation; BARNEY’S STEINER, LLC, a California limited
8 liability company; and DOES 1 through 25, inclusive, (hereinafter collectively, “Barney’s” or
9 “Defendants”). Plaintiffs, in their representative capacity, are informed and believe and on the basis
10 of that information and belief allege as follows:

11 **INTRODUCTION**

12 1. This lawsuit challenges Defendants’ employment practices with respect to their non-
13 exempt, hourly workers employed in the State of California at Defendants’ restaurant locations
14 (hereinafter “Restaurant Employees”), based on Defendants’ policy and practice of failing, among
15 other things, to provide legally compliant meal and rest breaks, denying earned wages, including
16 overtime pay, and failing to reimburse business expenses from April 6, 2020 to the present (“Relevant
17 Time Period”).

18 2. At all times relevant hereto, and with certain defined exceptions, Defendants’
19 compensation scheme did not fully compensate Plaintiffs with at least minimum wages and/or
20 designated rates for all hours worked.

21 3. At all times relevant hereto, and with certain defined exceptions, Defendants’
22 compensation scheme did not fully compensate Plaintiffs with overtime compensation for all overtime
23 hours worked.

24 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
25 to provide Plaintiffs with timely and adequate off-duty meal periods and meal period compensation in
26 violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 4 section 11.

27 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
28

1 to provide Plaintiffs with timely paid rest periods and rest period compensation in violation of Labor
2 Code sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

3 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants
4 knowingly and intentionally provided Plaintiffs with wage statements that, among others, do not show
5 all wages earned, all hours worked, or all applicable rates.

6 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
7 to maintain documentation of the actual hours worked each day by Plaintiffs, all wages earned, and
8 meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

9 8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed
10 to pay Plaintiffs all wages due and owing upon termination of employment including, but not limited
11 to, payment of wages for missed meal and rest periods compensation.

12 9. In this case, Plaintiffs seek civil penalties established by Labor Code section 2699, the
13 Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment
14 practices.

15 **PARTIES**

16 ***Plaintiff Jonathan Garcia***

17 10. Plaintiff Jonathan Garcia is an individual over the age of eighteen (18) and is now
18 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of
19 California. Plaintiff was employed by Defendants as a server from in or around 2003 to July 11, 2020.
20 Throughout his employment with Defendants, Plaintiff was a non-exempt, hourly employee.

21 ***Plaintiff Oscar Mendoza***

22 11. Plaintiff Oscar Mendoza is an individual over the age of eighteen (18) and is now and/or
23 at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of
24 California. Plaintiff was employed by Defendants as a dishwasher and busser from in or around
25 February 2001 to September 21, 2020. Throughout his employment with Defendants, Plaintiff was a
26 non-exempt, hourly employee.

27 ***Defendants***

1 12. Barney's College, Inc., Barney's Piedmont, Inc., Barney's San Francisco, Inc.,
2 Barney's San Vicente, Inc., Barney's Solano, Inc., Barneys Brentwood, Inc., Barneys Shattuck,
3 Incorporated, and Barney's Steiner LLC (Collectively "Barney's"), are companies conducting business
4 in the State of California as "Barney's Gourmet Hamburgers" restaurants. Defendants operate several
5 Barney's restaurant locations in California and all locations are registered as separate business entities
6 with the California Secretary of State's website. Upon information and belief, all identified business
7 entities however share or are affiliated with the same agent of service of process "Albert Sarshar" who
8 identifies himself as "Owner" of these restaurant locations.

9 13. Defendants Barney's College, Inc., Barney's Piedmont, Inc., Barney's San Francisco,
10 Inc., Barney's San Vicente, Inc., Barney's Solano, Inc., Barneys Brentwood, Inc., Barneys Shattuck,
11 Incorporated, and Barney's Steiner LLC have such a unity of interest and ownership that the separate
12 personalities do not in reality exist, rather the corporate structure is just a shield for the alter ego of
13 each other. Plaintiffs therefore are informed and believe and thereupon allege Barney's College, Inc.,
14 Barney's Piedmont, Inc., Barney's San Francisco, Inc., Barney's San Vicente, Inc., Barney's Solano,
15 Inc., Barneys Brentwood, Inc., Barneys Shattuck, Incorporated, and Barney's Steiner LLC, and each
16 of them, were their employer under California law, and did acts consistent with the existence of an
17 employer-employee relationship with Plaintiffs.

18 14. Upon information and belief, BARNEYS maintains a single, centralized Human
19 Resources (HR) department at its corporate headquarters in Berkeley, Los Angeles, or Santa Monica,
20 California, for all non-exempt, hourly paid employees working for BARNEYS in California, including
21 Mr. Garcia and other aggrieved employees. At all relevant times, BARNEYS issued and maintained
22 uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly
23 paid employees in California, including Mr. Garcia and other aggrieved employees, regardless of its
24 location or position.

25 15. Upon information and belief, BARNEYS maintains a centralized Payroll department
26 at its corporate headquarters in Berkeley, Los Angeles, or Santa Monica, California, which processes
27 payroll for all non-exempt, hourly paid employees working for BARNEYS in California, including
28

1 Mr. Garcia and other aggrieved employees. Further, BARNEYS issues the same formatted wage
2 statements in the same manner for all non-exempt, hourly paid employees working in California,
3 including Mr. Garcia and other aggrieved employees, irrespective of their location, position, or manner
4 in which each employee's employment ended. In other words, BARNEYS utilized the same methods
5 and formulas when calculating wages due to Mr. Garcia and other aggrieved employees in California.

6 ***Does 1 through 25***

7 16. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint
8 were, licensed to do business and/or actually doing business in the State of California. Plaintiffs do
9 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
10 25, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to
11 California Code of Civil Procedure, section 474. Plaintiffs will seek leave of court to amend this
12 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 25
13 are believed to be business entities who were also co-employers of Plaintiffs and the other aggrieved
14 employees.

15 ***All Defendants***

16 17. Plaintiffs are informed and believe and based thereon allege that at all times herein
17 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
18 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
19 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
20 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
21 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
22 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
23 matters referred to herein.

24 18. Plaintiffs are informed and believe and based thereon allege that at all times herein
25 mentioned, Defendants, and each of them, proximately caused Plaintiffs, all others similarly situated
26 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
27 damages alleged in this Complaint.
28

1 19. Plaintiffs are informed and believe and based thereon allege that Defendants, and each
2 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
3 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,
4 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-
5 employers of Plaintiffs and the other aggrieved employees.

6 20. Plaintiffs are informed and believe and based thereon allege that Defendants, and each
7 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
8 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
9 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over all causes of action herein pursuant to the California
12 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code
13 § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because
14 Defendants operate in this County, Plaintiffs resides in and/or worked in this county and the injuries
15 that are the subject of this lawsuit arose in this county.

16 22. Plaintiffs do not seek more than seventy-five thousand dollars (\$75,000) and waive
17 seeking more than seventy-five thousand dollars (\$75,000), including attorneys' fees but excluding
18 costs and interest, as to their share or portion of penalties or any other recovery with respect to the
19 violations alleged herein against Defendants. This case also raises no federal questions.

20 23. The Relevant Time Period for this matter encompasses April 6, 2020 and continues
21 through the present ("Relevant Time Period"). By letter submitted July 9, 2021, Plaintiffs, on behalf
22 of themselves and the other aggrieved employees, gave written notice by online submission to the
23 Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of
24 the California Labor Code alleged to have been violated, including the facts and theories to support
25 the alleged violations. However, as of April 6, 2020, the statute of limitations for the PAGA claims
26 asserted by Plaintiff on behalf of himself and the aggrieved employees were tolled as a result of
27 California Rules of Court, Emergency Rule 9(a). As such, the one-year statute of limitations extends
28

1 back to the start of this tolling period.

2 **FACTUAL ALLEGATIONS**

3 ***Background***

4 24. Plaintiff Jonathan Garcia commenced his employment with Defendants in or around
5 2003. Plaintiff worked as a Server at Defendants' restaurant Barney's. During his tenure with
6 Defendants, Plaintiff was classified as a non-exempt, hourly employee.

7 25. Plaintiff Oscar Mendoza commenced his employment with Defendants in or around
8 February 2001. Plaintiff worked as a dishwasher and busser at Defendants' restaurant Barney's.
9 During his tenure with Defendants, Plaintiff was classified as a non-exempt, hourly employee.

10 ***Defendants' Failure to Provide Adequate Meal Breaks***

11 26. Defendants implemented a uniform policy and procedure in which Plaintiffs were not
12 provided timely required duty-free meal periods.

13 27. Plaintiffs are informed and believe and based thereon allege that as a matter of policy
14 and/or practice, Defendants had, and continue to have, a company-wide policy and/or practice of
15 understaffing its locations, which combined with the assignment of heavy workloads and failure to
16 schedule or adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and
17 prevented Plaintiffs and other aggrieved employees from taking all timely, uninterrupted meal periods
18 to which they were entitled.

19 28. Moreover, as stated, upon information and belief, because Defendants frowned upon
20 employees accruing meal period penalties, Defendants' management pressured Plaintiffs and other
21 aggrieved employees to clock out for meal periods and continue working and/or would adjust their
22 time records in order to strictly limit meal penalties that would need to be paid by Defendants.

23 29. As such, Plaintiffs and other aggrieved employees worked through meal periods or had
24 their meal periods interrupted, because there were not enough employees on duty to handle the
25 workload. Defendants' practices and policies prevented Plaintiffs and other aggrieved employees from
26 taking all compliant meal periods to which they were entitled.

27 30. Additionally, Plaintiffs are informed and believe and based thereon allege that as a
28

1 matter of policy and/or practice, Defendants had a company-wide policy of requiring newly hired
2 employees to sign blanket meal period waivers at or near their time of hire. Defendants took the
3 position that non-exempt, hourly paid employees had waived their rights to first meal periods for the
4 entirety of their employment and, on that basis, did not provide them with all first meal periods to
5 which they were entitled. Specifically, Defendants' "Meal Period Waiver – Barney's Gourmet
6 Hamburgers (Hourly Employees)" form provides that the waiver remains in effect until the employee
7 provides his or her manager with written notice of his or her decision to revoke the waiver.
8 BARNEYS' presumption that first meal periods would not be provided for shifts in excess of five (5)
9 hours but less than six (6) hours due to blanket meal period waivers, and imposition on employees to
10 revoke the waivers in writing, discouraged and impeded Mr. Mendoza and other aggrieved employees
11 from taking all first meal periods to which they were entitled. Defendants' requirement to have
12 Plaintiffs and Restaurant Employees to sign meal period waivers simultaneously at or near their time
13 of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because
14 Defendants obligation to provide Plaintiffs and other aggrieved Restaurant Employees with meal
15 periods did not arise until Defendants had employed them for a full five (5) hours.

16 31. Finally, Plaintiffs are informed and believe and based thereon allege that as a matter of
17 policy and/or practice, Defendants engaged in a company-wide practice and/or policy of not paying
18 meal period premiums owed when compliant meal periods are not provided. Because of this practice
19 and/or policy, Plaintiffs and other aggrieved employees have not received premium pay for missed,
20 interrupted, or late meal periods. Alternatively, to the extent that Defendants did pay other aggrieved
21 employees premium pay for missed, late, and interrupted meal periods, Defendants did not pay other
22 aggrieved employees at the correct rate of pay for premiums because Defendants systematically failed
23 to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other
24 forms of remuneration, in the regular rate of pay.

25 32. Accordingly, throughout the Relevant Time Period, Defendants regularly:

- 26 a. Failed to provide Plaintiffs and the other Aggrieved Employees with a timely first
27 meal period of not less than thirty (30) minutes during which they were relieved
28

of all duty before working more than five (5) hours;

- b. Failed to provide other Aggrieved Employees with a timely second meal period of not less than thirty (30) minutes during which they were relieved of all duty before working more than ten (10) hours; and
- c. Failed to pay Plaintiffs and the other Aggrieved Employees one hour of pay at their regular rate of compensation for each workday that a timely meal period was not provided.

Defendants' Failure to Provide Adequate Rest Breaks

33. At all times relevant hereto, Labor Code sections 226.7, 516, 1198 and IWC Wage Order, number 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

34. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order, number 4, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

35. Plaintiffs are informed and believe and based thereon allege that Defendants' company-wide practices, including understaffing and assigning heavy workloads, prevented Plaintiffs and other aggrieved Restaurant Employees from being relieved of all duty to take their rest periods. Moreover, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiffs and other aggrieved Restaurant Employees not being authorized and permitted to take compliant rest periods.

36. Moreover, on and information and belief, Defendants maintained a company-wide on-premises rest period policy, which mandated that Plaintiffs and other aggrieved employees remain on Defendants' premises during their rest periods. Because Plaintiffs and 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 to purchase beverages from a nearby convenience store. Thus, Defendants effectively maintained control over Plaintiffs and other aggrieved employees during rest periods.

1 37. Plaintiffs also are informed and believe and based thereon allege that Defendants
2 maintained a company-wide practice and/or policy of not paying all rest period premiums owed when
3 compliant rest periods are not authorized and permitted. Alternatively, to the extent that Defendants
4 did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods,
5 Defendants did not pay other aggrieved employees at the correct rate of pay for premiums because
6 Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary
7 bonuses, and/or other forms of remuneration, in the regular rate of pay.

8 38. Accordingly, throughout the Relevant Time Period, Plaintiffs and the other aggrieved
9 employees were routinely denied rest breaks they were entitled to under California law.

10 39. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 11 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiffs and the
12 other aggrieved employees were relieved of all duty for each four (4) hours of work;
13 b. Failed to compensate Plaintiffs and the other aggrieved employees for break time when
14 breaks were taken; and
15 c. Failed to pay Plaintiffs and the other aggrieved employees one (1) hour of pay at their
16 regular rate of compensation for each workday that a timely rest period was not
17 permitted.

18 ***Defendants' Failure to Pay Minimum Wages and Designated Rates***

19 40. IWC Wage Order, number 4 defines "hours worked" to mean "the time during which
20 an employee is subject to the control of an employer and includes all the time the employee is suffered
21 or permitted to work, whether or not required to do so."

22 41. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly
23 provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars
24 (\$8.00) per hour.

25 42. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that
26 on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9)
27 per hour, that on and after January 1, 2016, the minimum wage for all industries shall be not less than
28

1 ten dollars (\$10) per hour, that on and after January 1, 2017, the minimum wage for all industries shall
2 be not less than ten dollars and fifty cents (\$10.50) per hour, and that on and after January 1, 2018, the
3 minimum wage for all industries shall be not less than eleven dollars (\$11) per hour,

4 43. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any agreement
5 to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to
6 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
7 interest thereon, reasonable attorney’s fees, and costs of suit.”

8 44. Labor Code section 1194.2(a) provides in relevant part: “In any action under Section
9 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
10 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
11 in an amount equal to the wages unlawfully unpaid and interest thereon.”

12 45. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
13 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
14 minimum so fixed is unlawful.”

15 46. Defendants’ Restaurant Employees, including Plaintiffs, are paid on an hourly basis for
16 their time spent working. Hours worked include, but are not limited to, all hours that an employee is
17 permitted or suffered to work including, but not limited to, off-the-clock work that an employer either
18 knew or should have known that an employee was performing.

19 47. As a matter of policy and/or practice, Defendants required Plaintiffs and other
20 aggrieved employees to perform work off-the-clock, including completing tasks before and after their
21 shifts and/or during meal periods, running work-related errands, responding to phone communications
22 from supervisors, undergoing mandatory health screenings and temperature checks, and/or completing
23 and obtaining mandatory work-related trainings and certifications, but did not compensate them for
24 this time.

25 48. In addition, as stated above, due to Defendants’ company-wide practice of
26 understaffing, assignment of heavy workloads, failure to schedule or adhere to a schedule of meal
27 periods, and subsequent lack of meal period coverage, Plaintiffs and other aggrieved employees were
28

1 impeded from taking all uninterrupted meal periods to which they were entitled and were required to
2 work during their meal periods, time for which they were not paid.

3 49. Moreover, as set forth above, on information and belief, Defendants systematically
4 failed to pay Plaintiffs and other aggrieved employees for actual hours worked during unpaid meal
5 periods, because these hours were not always correctly recorded.

6 50. Defendants knew or should have known that as a result of these company-wide
7 practices and/or policies, Plaintiffs and/or other Restaurant Employees were performing assigned
8 duties off-the-clock before and after their shifts and during meal periods, and were suffered or
9 permitted to perform work for which they were not paid. Accordingly, Defendants did not pay at least
10 minimum wages for all hours worked by Plaintiffs and other aggrieved Restaurant Employees.

11 51. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs
12 and other aggrieved employees for all of the hours they worked in violation of California Labor Code.

13 52. As such, throughout the Relevant Time Period, Defendants did not maintain adequate
14 records of all wages earned, hours worked, and meal and rest breaks taken.

15 ***Defendants' Failure to Pay Overtime Compensation***

16 53. Labor Code Section 1194 provides that an employee receiving less than the legal
17 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
19 and costs of suit.

20 54. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
21 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
22 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
23 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
24 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
25 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
26 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
27 the regular rate of pay of an employee."
28

1 55. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
2 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
3 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
4 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
5 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
6 seventh (7th) day of work in any one workweek.

7 56. Plaintiffs were classified as non-exempt by Defendants and were therefore entitled to
8 overtime compensation for all hours worked in excess of the hours and time specified in the Wage
9 Order, statutes and regulations identified herein.

10 57. As a matter of policy and/or practice, Defendants had, and continue to have, a
11 company-wide policy and/or practice of requiring Plaintiffs and/or other aggrieved employees to
12 perform tasks off-the-clock before and after their shifts and/or on their days off. Plaintiffs and other
13 aggrieved employees were required to remain under the control of Defendants and perform work-
14 related duties and errands off-the-clock.

15 58. Defendants failed to track the time Plaintiffs and other aggrieved employees spent
16 completing work, running errands, and/or responding to phone calls from management before and
17 after their shifts and/or on their days off and thus, Plaintiffs and other aggrieved employees received
18 no compensation for this time.

19 59. Defendants also implemented, on a company-wide basis, an employer-imposed
20 requirement that Plaintiffs and other aggrieved employees undergo mandatory health screenings and
21 temperature checks before their scheduled shifts. Plaintiffs and other aggrieved employees followed
22 Defendants' instructions and completed the required health screenings before clocking in for their
23 shifts. Even though Defendants required these health screenings, Defendants did not provide Plaintiffs
24 and other aggrieved employees a mechanism to record this time worked so they could be compensated
25 for the time spent undergoing mandatory health screenings and temperature checks.

26 60. Defendants had, and continue to have, a company-wide policy and/or practice of
27 requiring Plaintiffs and other aggrieved employees to complete and obtain work-related trainings and
28

1 certifications off-the-clock. As a condition of continuing their employment with Defendants, Plaintiffs
2 and other aggrieved employees were required to spend time obtaining specific certifications, such as
3 a California Food Handler Card, but were not paid for this time.

4 61. Defendants had and continue to have, a company-wide policy and/or practice of
5 understaffing its restaurants while assigning heavy workloads, which led to a failure to provide
6 Plaintiffs and other aggrieved employees with adequate meal period coverage, because there were too
7 few employees on duty to handle the workload. Defendants also had a practice of failing to schedule
8 or adhere to a schedule of meal periods. As a result of this inadequate meal period coverage and
9 scheduling, Plaintiffs and other aggrieved employees were not always afforded uninterrupted 30-
10 minute meal periods during shifts when they were entitled to receive a meal period.

11 62. Moreover, on information and belief, because Defendants frowned upon employees
12 accruing meal period penalties, Defendants pressured Plaintiffs and other aggrieved employees to
13 clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
14 even when they did not receive a compliant meal period, in order to strictly limit meal penalties that
15 Defendants would otherwise owe.

16 63. Finally, Defendants did not pay other aggrieved employees the correct overtime rate
17 for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid
18 other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of
19 remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate
20 all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
21 remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime
22 wage rate.

23 64. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiffs
24 and Restaurant Employees and thus failed to pay overtime wages for the actual amount of overtime
25 hours worked.

26 ***Defendants' Failure to Reimburse Employees for Necessary Business Expenditures***

27 65. Labor Code § 2802(a), requires employers to always reimburse employees for all
28

1 necessary expenditures or losses incurred by the employees in direct consequence of the discharge of
2 their duties, or of their obedience to the directions of the employer, even though unlawful, unless the
3 employee, at the time of obeying the directions, believed them to be unlawful.

4 66. Upon information and belief, during the relevant time period, Defendants had a
5 company-wide policy of requiring Plaintiffs and other aggrieved employees to utilize their own
6 personal cellular phones to carry out their job duties, but Defendants failed to reimburse them for the
7 costs of their work-related cellular phone expenses. Plaintiffs and other aggrieved employees were
8 required to use their personal cellular phones for work-related tasks, including responding to calls
9 from Defendants' management on their days off.

10 67. Moreover, upon information and belief Defendants had a company-wide policy of
11 requiring other aggrieved employees to utilize their own personal vehicles or obtain alternate
12 transportation to carry out company business but failed to reimburse them for all costs of travel,
13 including mileage.

14 68. Additionally, upon further information and belief, during the relevant time period,
15 Defendants, on a company-wide basis, forced Plaintiffs and other aggrieved employees to purchase
16 tools, supplies, and/or equipment that were necessary for the completion of their work-related duties.

17 69. Upon information and belief Defendants also, on a company-wide basis, required
18 Plaintiffs other aggrieved employees to obtain and pay for certain certifications, such as a California
19 Food Handler Card, that were required for their continued employment, as well as associated costs
20 such as training and/or examination fees. Defendants had a uniform policy of requiring employees to
21 pay for and obtain these certifications in order to continue their employment with Defendants.

22 70. Finally, upon information and belief Defendants on a company-wide basis, expected
23 Plaintiffs and other aggrieved employees to report to work wearing clean uniforms bearing the
24 company logo while simultaneously failing to provide employees with an adequate number of these
25 uniforms. This forced Plaintiffs and other aggrieved employees to clean their uniforms frequently and
26 incur expenses for doing so.

27 71. Accordingly, Defendants had, and continue to have, a company-wide policy and/or
28

1 practice of not reimbursing employees for expenses necessarily incurred in violation of California
2 Labor Code section 2802. Plaintiffs and other aggrieved employees are entitled to recover civil
3 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

4 ***Defendants' Failure to Timely Pay Wages During Employment***

5 72. California Labor Code section 204 requires that all wages earned by any person in any
6 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
7 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
8 of the month during which the labor was performed, and that all wages earned by any person in any
9 employment between the 16th and the last day, inclusive, of any calendar month, other than those
10 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
11 the following month.

12 73. California Labor Code section 204 also requires that all wages earned for labor in
13 excess of the normal work period shall be paid no later than the payday for the next regular payroll
14 period. Alternatively, California Labor Code section 204 provides that the requirements of this section
15 are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
16 wages are paid not more than seven (7) calendar days following the close of the payroll period.

17 74. Upon information and belief Defendants willfully failed to pay Plaintiffs and other
18 aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages,
19 meal and rest period premiums, and/or reporting time pay, within the time periods specified by
20 California Labor Code section 204.

21 75. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
22 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or
23 2699(a), (f)-(g).

24 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

25 76. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
26 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
27 Code Sections 202 requires an employer to pay an employee who quits any compensation due and
28

1 owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code
2 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
3 or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time
4 penalties in the form of continued compensation for up to thirty (30) workdays.

5 77. On information and belief, Defendants has a company-wide practice or policy of paying
6 departing employees their final wages on the next regular pay cycle, instead of adhering to the time
7 requirements set forth in Labor Code sections 201 and 202. Upon further information and belief other
8 aggrieved employees were terminated but did not have their final wages made available to them at the
9 time of discharge.

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

15 79. Defendants willfully and knowingly failed to pay Plaintiffs and the other aggrieved
16 employees, upon termination of employment, all accrued compensation including payment of
17 minimum wage compensation, missed meal and rest periods compensation and for time spent
18 performing work off the clock at Defendants' direction.

19 80. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
20 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or
21 2699(a), (f)-(g).

22 ***Release of Claims for Wages Due***

23 81. California Labor Code section 206.5 prohibits employers from requiring employees to
24 execute releases of a claim or right "on account of wages due, or to become due, or made as an advance
25 on wages to be earned, unless payment of those wages has been made. A release required or executed
26 in violation of the provisions of this section shall be null and void as between the employer and the
27 employee."
28

1 82. Labor Code section 206.5 further provides that ‘execution of a release’ includes
2 requiring an employee, as a condition of being paid, to execute a statement of the hours he or she
3 worked during a pay period which the employer knows to be false.”

4 83. Upon information and belief during the relevant time period, Defendants required
5 Plaintiffs and other aggrieved employees to release their claims for unpaid wages as a condition of
6 receiving their final paychecks.

7 84. Upon information and belief Defendants’ policy and practice of requiring Plaintiffs and
8 other aggrieved employees to release their claims for uncompensated hours worked and/or other pay
9 owed to them as a condition to receiving their wages is in violation of California Labor Code section
10 206.5.

11 85. Accordingly, Plaintiffs and other aggrieved employees are entitled to civil penalties,
12 attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

13 ***Compelling Patronization***

14 86. California Labor Code section 450 provides that an employer may not “compel or
15 coerce any employee, or applicant for employment, to patronize his or her employer, or any other
16 person, in the purchase of anything of value.”

17 87. Upon information and belief defendants had a company-wide policy of requiring
18 employees to purchase uniform items directly from the company. Defendants required Plaintiffs and
19 other aggrieved employees to wear an apron bearing Defendants’ company logo, but did not provide
20 Plaintiffs and other aggrieved employees with an adequate number of these aprons, compelling them
21 to purchase additional aprons directly from Defendants.

22 88. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
23 penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

24 ***Defendants’ Failure to Provide Accurate, Itemized Wage Statements***

25 89. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4,
26 section 7 required employers to maintain adequate employment records and provide employees with
27 accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly
28

1 rates worked during each pay period, the corresponding number of hours worked at each hourly rate,
2 and meal breaks taken.

3 90. Upon information and belief Defendants issued uniform wage statements to Plaintiffs
4 and other aggrieved employees that failed to correctly list: gross wages earned; total hours worked;
5 net wages earned; the address of the legal entity of the employer; and all applicable hourly rates in
6 effect during the pay period, including overtime rates of pay, and the corresponding number of hours
7 worked at each hourly rate.

8 91. Moreover, upon information and belief Defendants did not record the time Plaintiffs
9 and other 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 been
11 paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs
12 and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5),
13 respectively. For the same reason, Defendants failed to accurately list the total number of hours
14 worked by Plaintiffs and other aggrieved employees, in violation of section 226(a)(2), and failed to
15 list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
16 number of hours worked at each hourly rate, in violation of section 226(a)(9).

17 92. Moreover, because Defendants did not calculate other aggrieved employees' regular
18 rate of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of
19 gross wages in compliance with section 226(a)(1). For the same reason, Defendants also failed to list
20 the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly
21 list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay,
22 in violation of section 226(a)(9).

23 93. Additionally, and separate from the aforementioned violations, Defendants issued
24 uniform wage statements to Plaintiffs and other aggrieved employees that failed to correctly list the
25 address of the legal entity of the actual employer in violation of 226(a)(8). Upon information and
26 belief, the wage statement deficiencies also include, among other things, failing to list the number of
27 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
28

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

6 94. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
7 penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5,
8 and/or 2699(a), (f)-(g).

9 ***Defendants' Failure to Pay Split-Shift Premiums***

10 95. California Labor Code section 1198 provides that no employer may employ an
11 employee under conditions of labor that are prohibited by the applicable IWC wage order. California
12 Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the
13 commission shall be the . . . standard conditions of labor for employees. The employment of any
14 employee . . . under conditions of labor prohibited by the order is unlawful."

15 96. California Code of Regulations, Title 8, section 11050(4)(C) provides that, "When an
16 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the
17 minimum wage for that workday, except when the employee resides at the place of employment."

18 97. California Code of Regulations, Title 8, defines a split shift as "a work schedule, which
19 is interrupted by non-paid non-working periods established by the employer, other than bona fide rest
20 or meal periods."

21 98. Upon information and belief, Defendants failed to pay other aggrieved employees a
22 split-shift premium when they returned to work for an additional shift in the same day, after having
23 been clocked out for more than an hour. Other aggrieved employees were required to report to work
24 for their scheduled morning shifts, and then return later to complete their scheduled evening shifts.
25 When this occurred, Defendants did not always pay other aggrieved employees an additional hour at
26 minimum wage. At all relevant times, other aggrieved employees did not reside at Defendants'
27 locations.

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

3 ***Defendants' Failure to Provide Reporting Time Pay***

4 100. Upon information and belief, Defendants violated California Labor Code section 1198
5 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed to pay
6 Plaintiffs and other aggrieved employees reporting time pay when they reported to work for their
7 scheduled shift but were put to work for less than half of the regular schedule.

8 101. Upon information and belief, Defendants had a company-wide practice of sending
9 Plaintiffs and other aggrieved employees home early from their shifts, including before they had
10 worked at least half of their regular shift, but would not Plaintiffs and other aggrieved employees for
11 half of their scheduled shift.

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

17 103. The applicable IWC wage order, California Code of Regulations, Title 8, section
18 11050(5)(A), provides that "[e]ach workday an employee is required to report for work and does
19 report, but is not put to work or is furnished less than half said employee's usual or scheduled day's
20 work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less
21 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not
22 be less than the minimum wage."

23 104. During the relevant time period, Defendants violated California Labor Code section
24 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to
25 pay Plaintiff and Restaurant Employees reporting time pay when they reported to work for their
26 scheduled shift but were put to work for less than half of the regularly scheduled day's work.

27 105. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
28

1 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

2 ***Defendants' Failure to Provide Suitable Seating***

3 106. California Labor Code section 1198 requires that ". . . the standard conditions of labor
4 fixed by the commission shall be the . . . standard conditions of labor for employees. The employment
5 of any employee . . . under conditions of labor prohibited by the order is unlawful."

6 107. California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen
7 employees are not engaged in the active duties of their employment and the nature of the work requires
8 standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work
9 area and employees shall be permitted to use such seats when it does not interfere with the performance
10 of their duties."

11 108. Upon information and belief, Defendants' California restaurant locations are generally
12 similar in their layout and design and there was, and continues to be, space near their work areas (with
13 reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool
14 by Plaintiffs and other aggrieved employees during lulls in operation.

15 109. Upon further information and belief, Defendants did not provide Plaintiffs and other
16 aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to
17 use seats when it would not interfere with the performance of their duties for times when they were
18 not engaged in active duties that require standing.

19 110. Moreover, Defendants did not inform Plaintiffs and other aggrieved employees of their
20 rights to a seat or stool under California law.

21 111. Accordingly, Plaintiffs and other aggrieved employees are entitled to recover civil
22 penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Defendants
23 into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5
24 and/or 2699(a), (f)-(g).

25 ***Exhaustion of Administrative Remedies***

26 112. Plaintiffs have complied with the procedures for bringing suit specified in California
27 Labor Code Section 2699.3. By letter dated July 9, 2021 Plaintiffs, on behalf of themselves and the
28

1 other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor and
2 Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
3 California Labor Code alleged to have been violated, including the facts and theories to support the
4 alleged violations. Attached as Exhibits “1” and “2” are true and correct copies of the referenced
5 letters.

6 113. More than sixty-five (65) calendar days have passed since Plaintiffs provided the
7 LWDA with written notices. To date, Plaintiffs have not received any written notice nor been notified
8 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
9 herein.

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

12 **(On Behalf of Plaintiffs and the Other Aggrieved Employees Against All Defendants)**

13 114. Plaintiffs incorporate by reference the allegations set forth above.

14 115. As set forth above, Plaintiffs have complied with the procedures for bringing suit
15 specified in California Labor Code Section 2699.3. By letter dated July 9, 2021, Plaintiffs, on behalf
16 of themselves and the other aggrieved employees, gave written notices by certified mail to the LWDA
17 and to Defendants of the specific provisions of the California Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations. More than sixty-five (65)
19 calendar days have passed since Plaintiffs provided the LWDA with written notice. To date, Plaintiffs
20 have not received any written notice nor been notified from the LWDA that it does intend to investigate
21 the violations of the California Labor Code alleged herein.

22 116. This action arises out of the allegedly unlawful labor practices of Defendants in
23 California. Through this private attorneys’ general action, Plaintiffs represent themselves, and other
24 aggrieved employees of Defendants that were in California, against whom Defendants have allegedly
25 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
26 herein, Plaintiffs now seek to recover civil penalties, attorneys’ fees, and costs, pursuant to the Labor
27 Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.*

117. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

118. Plaintiffs are informed and believe that throughout the Relevant Time Period, Defendants have applied centrally devised policies and practices to Plaintiffs and the other aggrieved employees with respect to wages, hours, and working conditions.

Failure to Pay Minimum Wages and Designated Rates

119. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

120. Where any statute or contract requires an employer to maintain the designated wage scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

121. At all relevant times, and as a matter of policy and/or practice, Defendants required Plaintiffs and other aggrieved employees to perform work off-the-clock, including completing tasks before and after their shifts and/or during meal periods, running work-related errands, responding to phone communications from supervisors, undergoing mandatory health screenings, and/or completing and obtaining mandatory work-related trainings and certifications, but did not compensate them for this time.

122. In addition, due to Defendants' company-wide practice of understaffing, assignment of heavy workloads, failure to schedule or adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Plaintiffs and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

123. Moreover, on information and belief, Defendants systematically failed to pay Plaintiffs and other aggrieved employees for actual hours worked during unpaid meal periods, because these

1 hours were not always correctly recorded.

2 124. Defendants' failure to pay Plaintiffs and other aggrieved employees minimum wages
3 and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiffs and
4 other aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and
5 2699(a), (f), and (g).

6 **Failure to Pay Overtime Compensation**

7 125. Labor Code Section 1194 provides that an employee receiving less than the legal
8 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
9 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
10 and costs of suit.

11 126. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
12 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
13 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
14 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
15 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
16 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
17 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
18 the regular rate of pay of an employee."

19 127. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
20 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
21 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
22 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
23 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
24 seventh (7th) day of work in any one workweek.

25 128. Plaintiffs and the other aggrieved employees were classified as non-exempt by
26 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the
27 hours and time specified in the Wage Order, statutes and regulations identified herein.
28

1 129. As a matter of policy and/or practice, Defendants had, and continue to have, a
2 company-wide policy and/or practice of requiring Plaintiffs and/or other aggrieved employees to
3 perform tasks off-the-clock before and after their shifts and/or on their days off. Plaintiffs and other
4 aggrieved employees were required to remain under the control of Defendants and perform work-
5 related duties and errands off-the-clock.

6 130. Defendants also implemented, on a company-wide basis, an employer-imposed
7 requirement that Plaintiffs and other aggrieved employees undergo mandatory health screenings and
8 temperature checks before their scheduled shifts.

9 131. Defendants had, and continue to have, a company-wide policy and/or practice of
10 requiring Plaintiffs and other aggrieved employees to complete and obtain work-related trainings and
11 certifications off-the-clock

12 132. Defendants had and continue to have, a company-wide policy and/or practice of
13 understaffing its restaurants while assigning heavy workloads, which led to a failure to provide
14 Plaintiffs and other aggrieved employees with adequate meal period coverage, because there were too
15 few employees on duty to handle the workload. Defendants also had a practice of failing to schedule
16 or adhere to a schedule of meal periods.

17 133. Moreover, on information and belief, because Defendants frowned upon employees
18 accruing meal period penalties, Defendants pressured Plaintiffs and other aggrieved employees to
19 clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
20 even when they did not receive a compliant meal period, in order to strictly limit meal penalties that
21 Defendants would otherwise owe

22 134. Defendants did not pay other aggrieved employees the correct overtime rate for the
23 recorded overtime hours that they generated.

24 135. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiffs
25 and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of
26 overtime hours worked.

27 136. Plaintiff and/or other aggrieved employees are entitled to recover civil penalties,
28

1 attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-
2 (g).

3 **Failure to Provide Timely Meal and Rest Breaks**

4 137. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative
5 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods
6 of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with
7 two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more
8 than ten (10) hours.

9 138. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
10 requiring employees to work during required meal periods and require employers to pay non-exempt
11 employees an additional hour of premium wages on each workday that the employee is not provided
12 with a required meal period.

13 139. Plaintiffs are informed and believe and thereon allege that, at relevant times during the
14 applicable limitations period, Defendants failed to provide Plaintiffs with a timely uninterrupted meal
15 period of at least thirty (30) minutes on each day that she worked five (5) or more hours, as required
16 by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that did not permit
17 them to take all legally required meal periods.

18 140. Plaintiffs are informed, believe, and thereon allege that, at relevant times during the
19 applicable limitations period, Defendants maintained a policy or practice of not providing the other
20 aggrieved employees with timely uninterrupted meal periods of at least thirty (30) minutes for each
21 five (5) hour work period, as required by Labor Code Section 512 and the Wage Order, as a result of
22 duties and schedules that do not permit them to take all legally required meal periods.

23 141. Plaintiffs are informed, believe, and thereon allege that, at relevant times during the
24 applicable limitations period, Defendants maintained a policy or practice of not providing the other
25 aggrieved employees with a timely second meal period of not less than thirty (30) minutes during
26 which they were relieved of all duty before working more than ten (10) hours.

27 142. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit
28

1 and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net
2 rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of
3 each work period insofar as is practicable.

4 143. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from
5 requiring employees to work during required rest periods and require employers to pay non-exempt
6 employees an additional hour of premium wages on each workday that the employee is not provided
7 with the required rest period.

8 144. At relevant times during the applicable limitations period, Defendants failed to provide
9 Plaintiffs with timely net rest periods of at least ten (10) minutes for each four (4) hour work period,
10 or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not
11 permit Plaintiffs to take all legally required rest breaks.

12 145. Plaintiffs are informed, believe, and thereon allege that, at relevant times during the
13 applicable limitations period, Defendants maintained a policy or practice of not providing the other
14 aggrieved employees with timely net rest periods of a least ten (10) minutes for each four (4) hour
15 work period, or major portion thereof, as required by the Wage Order, as a result of duties and
16 schedules that do not permit them to take all legally required rest breaks.

17 146. Plaintiff and/or other aggrieved employees are entitled to recover civil penalties,
18 attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-
19 (g).

20 **Failure to Timely Pay Wages During Employment**

21 147. California Labor Code section 204 requires that all wages earned by any person in any
22 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
23 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
24 of the month during which the labor was performed, and that all wages earned by any person in any
25 employment between the 16th and the last day, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
27 the following month
28

1 148. California Labor Code section 204 also requires that all wages earned for labor in
2 excess of the normal work period shall be paid no later than the payday for the next regular payroll
3 period. Alternatively, California Labor Code section 204 provides that the requirements of this section
4 are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
5 wages are paid not more than seven (7) calendar days following the close of the payroll period.

6 149. Upon information and belief Defendants willfully failed to pay Plaintiffs and other
7 aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages,
8 meal and rest period premiums, and/or reporting time pay, within the time periods specified by
9 California Labor Code section 204.

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

13 **Release of Claims for Wages Due**

14 151. California Labor Code section 206.5 prohibits employers from requiring employees to
15 execute releases of a claim or right "on account of wages due, or to become due, or made as an advance
16 on wages to be earned, unless payment of those wages has been made. A release required or executed
17 in violation of the provisions of this section shall be null and void as between the employer and the
18 employee."

19 152. Labor Code section 206.5 further provides that " 'execution of a release' includes
20 requiring an employee, as a condition of being paid, to execute a statement of the hours he or she
21 worked during a pay period which the employer knows to be false."

22 153. Upon information and belief Defendants' policy and practice of requiring Plaintiffs and
23 other aggrieved employees to release their claims for uncompensated hours worked and/or other pay
24 owed to them as a condition to receiving their wages is in violation of California Labor Code section
25 206.5.

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

Failure to Pay Wages Upon Termination

155. Labor Code Section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

156. Labor Code Section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

157. Labor Code Section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

158. Plaintiffs are informed and believe that Defendants' failures to timely pay Plaintiffs and the aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and overtime, and unprovided rest and meal period premium wages, have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

159. Plaintiffs 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).

Failure to Provide and Maintain Compliant Wage Statements

160. Labor Code Section 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) 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; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also

1 prevents an employer from prohibiting an employee from maintaining a personal record of hours
2 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
3 keep the records required by Section 1174.

4 161. Pursuant to California Labor Code Section 226(a), Plaintiffs and the other aggrieved
5 employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
6 itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly
7 rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly
8 rate by the employee.

9 162. Defendants failed to provide Plaintiffs with accurate itemized statements in accordance
10 with California Labor Code Section 226(a) by providing Plaintiffs with wage statements with
11 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
12 the unlawful labor and payroll practices described herein.

13 163. Plaintiffs are informed and believe and thereon allege that, at all relevant times during
14 the applicable limitations period, Defendants issued uniform wage statements to Plaintiffs and other
15 aggrieved employees that failed to correctly list: gross wages earned; total hours worked; net wages
16 earned; the address of the legal entity of the employer; and all applicable hourly rates in effect during
17 the pay period, including overtime rates of pay, and the corresponding number of hours worked at
18 each hourly rate.

19 164. Plaintiffs are informed and believe and thereon allege that Defendants' failure to
20 provide Plaintiffs and the aggrieved employees with accurate written wage statements is knowing and
21 intentional.

22 165. Moreover, Plaintiffs are informed and believe and thereon allege that Defendants did
23 not record the time Plaintiffs and other aggrieved employees spent working off-the-clock and deducted
24 time from their records for meal periods that were interrupted and/or missed (and therefore time for
25 which they should have been paid), Defendants did not list the correct amount of gross wages and net
26 wages earned by Plaintiffs and other aggrieved employees in compliance with section 226(a)(1) and
27 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total
28

1 number of hours worked by Plaintiffs and other aggrieved employees, in violation of section 226(a)(2),
2 and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding
3 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

4 166. Additionally, and separate from the aforementioned violations, Defendants issued
5 uniform wage statements to Plaintiffs and other aggrieved employees that failed to correctly list the
6 address of the legal entity of the actual employer in violation of 226(a)(8).

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

14 168. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs
15 and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
16 statements were violated and they were misled about the amount of wages they had actually earned
17 and were owed. In addition, the absence of accurate information on their wage statements prevented
18 immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical
19 computations to determine the amounts of wages owed, has caused difficulty and expense in
20 attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate
21 information about wages and amounts deducted from wages to state and federal government agencies.

22 169. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
23 behalf of themselves and other current or former employees, to bring a civil action to recover civil
24 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

25 170. Plaintiffs and other aggrieved employees are entitled to recover civil penalties,
26 attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or
27 2699(a), (f)-(g).

Failure to Provide Reporting Time Pay

171. 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.”

172. The applicable IWC wage order, 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.”

173. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay Plaintiff and Restaurant 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.

174. Plaintiffs and other Restaurant Employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198. As a result, Plaintiffs and other aggrieved employees are entitled to recover civil penalties pursuant to sections 1194 and 2699(a), (f), and (g).

Compelling Patronization

175. California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.”

176. Upon information and belief defendants had a company-wide policy of requiring employees to purchase uniform items directly from the company. Defendants required Plaintiffs and other aggrieved employees to wear an apron bearing Defendants' company logo, but did not provide

1 Plaintiffs and other aggrieved employees with an adequate number of these aprons, compelling them
2 to purchase additional aprons directly from Defendants.

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

5 **Failure to Pay Split-Shift Premiums**

6 178. California Labor Code section 1198 provides that no employer may employ an
7 employee under conditions of labor that are prohibited by the applicable IWC wage order. California
8 Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the
9 commission shall be the . . . standard conditions of labor for employees. The employment of any
10 employee . . . under conditions of labor prohibited by the order is unlawful.”

11 179. California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When an
12 employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the
13 minimum wage for that workday, except when the employee resides at the place of employment.”

14 180. Upon information and belief, Defendants failed to pay other aggrieved employees a
15 split-shift premium when they returned to work for an additional shift in the same day, after having
16 been clocked out for more than an hour. Other aggrieved employees were required to report to work
17 for their scheduled morning shifts, and then return later to complete their scheduled evening shifts.
18 When this occurred, Defendants did not always pay other aggrieved employees an additional hour at
19 minimum wage. At all relevant times, other aggrieved employees did not reside at Defendants'
20 locations.

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

23 **Failure to Reimburse For Necessary Business Expenditures**

24 182. Labor Code § 2802(a), an employer shall indemnify its employees for all necessary
25 expenditures or losses incurred by the employees in direct consequence of the discharge of their duties,
26 or of their obedience to the directions of the employer, even though unlawful, unless the employee, at
27 the time of obeying the directions, believed them to be unlawful.
28

1 183. During the Relevant Time Period, Plaintiffs and the Aggrieved Employees incurred
2 necessary business-related expenses and costs that were not fully reimbursed by Defendants, including
3 and without limitations, personal cell phone usage and personal vehicle usage to carry out the day-to-
4 day duties for the benefit of Defendants and its members. Defendants also required Plaintiffs and other
5 aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the
6 completion of their work-related duties as well as obtain and pay for certain certifications, such as a
7 California Food Handler Card, that were required for their continued employment.

8 184. During Relevant Time Period, Defendants failed to reimburse Aggrieved Employees,
9 including Plaintiffs, for necessary business-related expenses and costs.

10 185. Aggrieved Employees, including Plaintiffs, are entitled to recover civil penalties from
11 Defendants for their unreimbursed business-related expenses and costs incurred during the course and
12 scope of their employment.

13 186. Plaintiffs and other aggrieved employees are entitled to recover civil penalties,
14 attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

15 **Failure to Provide Suitable Seating**

16 187. California Labor Code section 1198 makes it illegal to employ an employee under
17 conditions of labor that are prohibited by the applicable wage order. The applicable wage order in this
18 claim is IWC Wage Order number 2, section 14, which requires employers to provide suitable seats
19 when the nature of the work reasonably permits the use of seats, and when the nature of the work
20 requires standing, an adequate number of suitable seats is required to be placed within a reasonable
21 proximity to the work area., and employees must be permitted to use such seats when it does not
22 interfere with the performance of their duties.

23 188. Defendants failed to provide suitable seats when the nature of plaintiffs' work
24 reasonably permitted the use of seats, and when the nature of plaintiffs' work required standing, failed
25 to provide an adequate number of suitable seats within a reasonable proximity to the work area, and
26 failed to permit plaintiffs to use such seats when it did not interfere with the performance of their
27 duties in violation of California Labor Code section 1198 and IWC Wage Order No. 2 section 14.

189. Moreover, Defendants did not inform Plaintiffs and other aggrieved employees of their rights to a seat or stool under California law.

190. A violation of Labor Code section 1198 provides a private right of action under PAGA to recover civil penalties.

191. Plaintiffs and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BARNEYS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Section 558 Penalties

192. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

193. The PAGA states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves, or themselves and other current or former employees...

194. One provision of law enforceable through PAGA as to civil penalties, though not unpaid wages, is Labor Code § 558, which states the following:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages...

Penalties Authorized by PAGA

195. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiffs and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants'

1 violations of California Labor Code sections 200, 201, 202, 203, 204, 206.5, 210, 216, 221, 223, 225.5,
2 226, 226.3, 226.7, 450, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2751, 2802,
3 and 2698 *et seq.*, during the applicable limitations period in the following amounts:

4 a. For violations of California Labor Code sections 200, 201, 202, 203, 206.5, 226.7,
5 450, 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period
6 for each initial violation and two hundred dollars (\$200.00) for each aggrieved
7 employee per pay period for each subsequent violation (penalty amounts established
8 by California Labor Code Section 2699(f)(2));

9 b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars
10 (\$100.00) for each aggrieved employee per pay period for each initial violation
11 and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay
12 period for each subsequent violation regardless of whether the initial violation is
13 intentionally committed (penalty amounts established by California Labor Code §
14 1197.1);

15 c. For violations of California Labor Code Sections 216, 221, 223 one hundred
16 dollars (\$100.00) for each aggrieved employee for each initial violation and two
17 hundred dollars (\$200.00) for each aggrieved employee for each subsequent or
18 willful violation (penalty amounts established by California Labor Code § 225.5);

19 d. For violations of California Labor Code Section 1174, five hundred dollars
20 (\$500.00) for each of Defendants' violations in addition to any other penalties or
21 fines permitted by law (penalty amounts established by California Labor Code §
22 1174.5);

23 e. For violations of California Labor Code Section 226, two hundred fifty dollars
24 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
25 employee for each subsequent violation (penalty amounts established by California
26 Labor Code Section 226.3);

27 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
28

per employee for initial violation and two hundred dollars (\$200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);

g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558).

h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558).

196. Pursuant to California Labor Code Section 2699(g), Plaintiffs, on behalf of themselves and the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs on behalf of themselves and on behalf of the aggrieved employees, pray for judgment against Defendants as follows:

- a. Civil penalties;
- b. Other penalties and fines permitted by law;
- c. Costs of suit;
- d. Reasonable attorneys' fees;
- e. Pre-judgment and post-judgment interest as provided by law; and

f. Such other and further relief as the Court deems just and proper.

DATED: September 20, 2021

BOYAMIAN LAW, INC.
CAPSTONE LAW, APC

By: 
Michael H. Boyamian
Heather M. Zermeno
Attorney for Plaintiffs JONATHAN
GARCIA and OSCAR MENDOZA, Other
Aggrieved Employees, and the General
Public

EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JULIAN QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

July 9, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jonathan Garcia v. Barney's College, Inc., et al.*

Dear PAGA Administrator:

This office represents Jonathan Garcia in connection with his claims under the California Labor Code. Mr. Garcia was an employee of BARNEY'S COLLEGE, INC.; BARNEY'S PIEDMONT, INC.; BARNEY'S SAN FRANCISCO, INC.; BARNEY'S SAN VICENTE, INC.; BARNEY'S SOLANO, INC.; BARNEYS BRENTWOOD, INC.; BARNEYS SHATTUCK, INCORPORATED; and BARNEY'S STEINER, LLC. For the purpose of this letter, Mr. Garcia collectively refers to these entities as "BARNEYS."

The employers may be contacted directly at the addresses below:

BARNEY'S COLLEGE, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEY'S SOLANO, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEY'S PIEDMONT, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEYS BRENTWOOD, INC.
225 26TH ST#18
SANTA MONICA CA 90402

BARNEY'S SAN FRANCISCO, INC.
1591 SOLANO AVE
BERKELEY CA 94707

BARNEYS SHATTUCK, INCORPORATED
1591 SOLANO AVE
BERKELEY CA 94707

BARNEY'S SAN VICENTE, INC.
11660 SAN VICENTE BLVD
LOS ANGELES CA 90049

BARNEY'S STEINER, LLC
525 MARGURITA AVE
SANTA MONICA CA 90402

Mr. Garcia 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"). Mr. Garcia seeks relief on behalf of

himself, the State of California, and other persons who are or were employed by BARNEYS 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.

BARNEYS employed Mr. Garcia as an hourly paid, non-exempt Server from approximately 2003 to July 2020. Mr. Garcia worked for BARNEYS at its restaurant located at 5819 College Avenue, Oakland, California 94618. During his employment, Mr. Garcia typically worked 4-5.5 hours per day, five (5) days per week, from 11:00 a.m. to 5:00 p.m. At the time Mr. Garcia’s employment with BARNEYS ended, he earned approximately \$14.14 per hour. His job duties included, without limitation, opening the restaurant, restocking condiments, attending to customers, and assisting in preparing food.

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

BARNEYS’ Company-Wide and Uniform Payroll and HR Practices

BARNEY’S COLLEGE, INC.; BARNEY’S PIEDMONT, INC.; BARNEY’S SAN FRANCISCO, INC.; BARNEY’S SAN VICENTE, INC.; BARNEY’S SOLANO, INC.; BARNEYS BRENTWOOD, INC.; and BARNEYS SHATTUCK, INCORPORATED are California corporations, and BARNEY’S STEINER, LLC is a California limited liability company. Together, BARNEYS owns and operates a chain of restaurants in Northern and Southern California. BARNEYS has approximately seven (7) Barney’s Gourmet Hamburgers restaurant locations in California. Upon information and belief, BARNEYS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Berkeley, Los Angeles, or Santa Monica, California, for all non-exempt, hourly paid employees working for BARNEYS in California, including Mr. Garcia and other aggrieved employees. At all relevant times, BARNEYS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Garcia and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Garcia’s experience and counsel’s review of those records currently available relating to Mr. Garcia’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, Mr. Garcia reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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.

BARNEYS willfully failed to pay all overtime wages owed to Mr. Garcia and other aggrieved employees. During the relevant time period, Mr. Garcia and/or 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, BARNEYS had, and continues to have, a company-wide policy and/or practice of requiring Mr. Garcia and/or other aggrieved employees to perform tasks off-the-clock before and after their shifts and/or on their days off. Mr. Garcia and other aggrieved employees were required to remain under the control of BARNEYS and perform work-related duties and errands off-the-clock. For example, once per week, Mr. Garcia was required to spend 15-30 minutes off-the-clock folding napkins, cleaning the restaurant premises, or remaining on duty until another employee arrived. As a further example, other aggrieved employees were required to spend five (5) minutes twice per week stocking inventory shipments prior to clocking in for their shifts, and 10 minutes once per week restocking supplies after their scheduled shifts had ended. Moreover, twice per week, other aggrieved employees were instructed to travel to other BARNEYS restaurants to deliver supplies after they had clocked out. Furthermore, Mr. Garcia and other aggrieved employees were required to answer phone calls from management on their days off. For example, Mr. Garcia was required to answer calls from management 2-3 times per month to discuss the work he had completed during his previous shifts. BARNEYS failed to track the time Mr. Garcia and other aggrieved employees spent completing work, running errands, and/or responding to phone calls from management, and thus, Mr. Garcia and other aggrieved employees received no compensation for this time.

Second, BARNEYS implemented, on a company-wide basis, an employer-imposed requirement that Mr. Garcia and other aggrieved employees undergo mandatory health screenings and temperature checks before their scheduled shifts. Mr. Garcia and other aggrieved employees followed BARNEYS’ instructions and completed the required health screenings before clocking in for their shifts. Even though BARNEYS required these health screenings, BARNEYS did not provide Mr. Garcia and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory health screenings and temperature checks. Mr. Garcia and other aggrieved employees spent approximately five (5) minutes answering mandatory health screening questions and having their temperatures checked before BARNEYS permitted them to clock in, but BARNEYS did not compensate them for the time they remained under BARNEYS’ control.

Third, BARNEYS had, and continues to have, a company-wide policy and/or practice of requiring Mr. Garcia and other aggrieved employees to complete and obtain work-related trainings and certifications off-the-clock. As a condition of continuing their employment with BARNEYS, Mr. Garcia and other aggrieved employees were required to spend time obtaining specific certifications, such as a California Food Handler Card, but were not paid for this time. For example, Mr. Garcia spent 1-2 hours completing the training for this mandatory certification while off-the-clock. Thus, BARNEYS failed to track the time Mr. Garcia and other aggrieved employees spent completing and obtaining mandatory certifications, and Mr. Garcia and other aggrieved employees received no compensation for this time.

Fourth, BARNEYS had and continues to have, a company-wide policy and/or practice of understaffing its restaurants while assigning heavy workloads, which led to a failure to provide Mr. Garcia and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Mr. Garcia and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Garcia was required to work through his meal periods entirely on holidays in order to meet customer demand. In addition, at least once per week, Mr. Garcia was instructed by management to return early from his meal period and to work through approximately 20 minutes of his meal period to service customers. As further examples, other aggrieved employees were required to work through their meal periods once per month and management would interrupt other aggrieved employees' meal periods three (3) times per week for 5-15 minutes to discuss daily work objectives. Furthermore, BARNEYS had a practice of failing to schedule or adhere to a schedule of meal periods, which further caused Mr. Garcia and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, on information and belief, because BARNEYS frowned upon employees accruing meal period penalties, BARNEYS pressured Mr. Garcia and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that BARNEYS would otherwise owe. Thus, Mr. Garcia and other aggrieved employees performed work during meal periods for which they were not paid.

BARNEYS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Garcia and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Garcia and/or other aggrieved employees sometimes 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, Mr. Garcia and/or other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, BARNEYS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BARNEYS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BARNEYS 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, BARNEYS failed to pay all overtime wages by paying a lower overtime rate than required.

BARNEYS' failure to pay Mr. Garcia and/or other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Garcia and/or 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").

As stated above, BARNEYS required Mr. Garcia and other aggrieved employees to perform work off-the-clock, including completing tasks before and after their shifts and/or during meal periods, running work-related errands, responding to phone communications from supervisors, undergoing mandatory health screenings, and/or completing and obtaining mandatory work-related trainings and certifications, but did not compensate them for this time.

In addition, as stated above, due to BARNEYS' company-wide practice of understaffing, assignment of heavy workloads, failure to schedule or adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Garcia and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Moreover, as set forth above, on information and belief, BARNEYS systematically failed to pay Mr. Garcia and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Thus, BARNEYS did not pay at least minimum wages for all hours worked by Mr. Garcia and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BARNEYS 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, BARNEYS regularly failed to pay at least minimum wages to Mr. Garcia 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. Mr. Garcia 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, 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.

As stated above, BARNEYS had, and continues to have, a company-wide policy and/or practice of understaffing its locations, which combined with the assignment of heavy workloads and failure to schedule or adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and prevented Mr. Garcia and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

Moreover, as stated, upon information and belief, because BARNEYS frowned upon employees accruing meal period penalties, BARNEYS' management pressured Mr. Garcia and other aggrieved employees to clock out for meal periods and continue working and/or would adjust their time records in order to strictly limit meal penalties that would need to be paid by BARNEYS. For example, Mr. Garcia was instructed to clock out and continue working by BARNEYS' management, and/or would have his time modified to reflect compliant meal periods if he failed to clock himself out. Thus, Mr. Garcia and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

BARNEYS' practices and policies prevented Mr. Garcia and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Garcia and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, as stated, Mr. Garcia was required to work through his meal periods entirely on holidays and was instructed by management to cut his meal periods short once per week in order to meet customer demand. Moreover, Mr. Garcia's meal periods were interrupted once per week to answer calls from management to the restaurant phone line when his coworkers were occupied. Specifically, in addition, Mr. Garcia's timepunch records reflect that on July 10, 2020, Mr. Garcia worked 5.07 hours and did not receive a meal period, but BARNEYS did not pay him a meal period premium. As further examples, as stated, other aggrieved employees were required to work through their meal periods once per month and management would interrupt other aggrieved employees' meal periods three (3) times per week to discuss daily work objectives.

Additionally, BARNEYS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Garcia 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.

Moreover, BARNEYS had a company-wide policy of requiring newly hired employees to sign blanket meal period waivers at or near their time of hire. BARNEYS took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their

employment and, on that basis, did not provide them with all first meal periods to which they were entitled. Specifically, BARNEYS' "Meal Period Waiver – Barney's Gourmet Hamburgers (Hourly Employees)" form provides that the waiver remains in effect until the employee provides his or her manager with written notice of his or her decision to revoke the waiver. BARNEYS' presumption that first meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers, and imposition on employees to revoke the waivers in writing, discouraged and impeded other aggrieved employees from taking all first 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 BARNEYS 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 BARNEYS' obligation to provide other aggrieved employees with meal periods did not arise until BARNEYS had employed them for a full five (5) hours.

BARNEYS knew or should have known that as a result of its policies and/or practices, that Mr. Garcia and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. BARNEYS further knew or should have known that it did not pay Mr. Garcia and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted because, on information and belief, BARNEYS adjusted employee time records to reflect compliant meal periods when compliant meal periods were not taken.

Furthermore, BARNEYS has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Garcia and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BARNEYS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BARNEYS did not pay other aggrieved employees at the correct rate of pay for premiums because BARNEYS 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, BARNEYS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Garcia 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, 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, BARNEYS regularly failed to authorize and permit Mr. Garcia and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BARNEYS' company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Garcia and other aggrieved employees from being relieved of all duty to take their rest periods. Moreover, BARNEYS failed to schedule rest periods, which, coupled with BARNEYS' failure to provide adequate rest period coverage, further led to Mr. Garcia and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Moreover, on and information and belief, BARNEYS maintained a company-wide on-premises rest period policy, which mandated that Mr. Garcia and other aggrieved employees remain on BARNEYS' premises during their rest periods. Because Mr. Garcia and 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 to purchase beverages from a nearby convenience store. Thus, BARNEYS effectively maintained control over Mr. Garcia and other aggrieved employees during rest periods.

As a result of BARNEYS' practices and policies, Mr. Garcia 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, Mr. Garcia missed his rest periods three (3) times per week due to a lack of rest period coverage. In addition, Mr. Garcia's rest periods were interrupted and cut short 4-6 times per week by BARNEYS' management instructing him to return to work, or calling him on the company landline to assign him tasks. As a further example, other aggrieved employees missed and had their rest periods interrupted due to heavy workloads and interruptions from management to discuss daily work objectives.

BARNEYS 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. Alternatively, to the extent that BARNEYS did pay other aggrieved employees one (1) additional hour of premium pay

for missed rest periods, BARNEYS did not pay other aggrieved employees at the correct rate of pay for premiums because BARNEYS 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, BARNEYS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Garcia 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

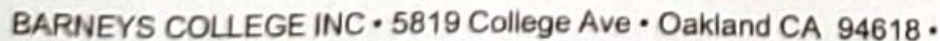
California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. BARNEYS has not provided Mr. Garcia and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage 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, BARNEYS has knowingly and intentionally provided Mr. Garcia and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BARNEYS issued uniform wage statements to Mr. Garcia and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity of the employer; 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, BARNEYS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because BARNEYS did not record the time Mr. Garcia 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), BARNEYS did not list the correct amount of gross wages and net wages earned by Mr. Garcia and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BARNEYS failed to accurately list the total number of hours worked by Mr. Garcia 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).

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

Third, and separate from these violations, BARNEYS issued uniform wage statements to Mr. Garcia and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Garcia's and other aggrieved employees' wage statements incorrectly list the employer's address as "5819 College Ave, Oakland, CA 94618," but, according to the California Secretary of State's website, "BARNEY'S COLLEGE, INC." is listed at a different address, "525 Margurita Ave., Santa Monica, CA 90402." *See excerpt from example pay stub below.*



BARNEYS COLLEGE INC • 5819 College Ave • Oakland CA 94618 •

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 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 of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; 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), BARNEYS willfully failed to maintain accurate payroll records for Mr. Garcia 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, BARNEYS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Garcia and other aggrieved employees, in violation of section 1198. As stated, BARNEYS engaged in a company-wide practice and/or policy of falsifying Mr. Garcia'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 Mr. Garcia and other aggrieved employees. Furthermore, in light of BARNEYS' failure to provide other aggrieved

employees with second 30-minute meal periods to which they were entitled, BARNEYS kept no records of meal start and end times for second meal periods.

Because BARNEYS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Garcia 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, Mr. Garcia and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Garcia 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, BARNEYS willfully failed to pay Mr. Garcia and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Garcia 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.

On information and belief, BARNEYS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time

requirements set forth in Labor Code sections 201 and 202. For example, other aggrieved employees were terminated but did not have their final wages made available to them at the time of discharge.

In addition, BARNEYS willfully failed to pay Mr. Garcia and other aggrieved employees who are no longer employed by BARNEYS the earned and unpaid wages set forth above, 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 BARNEYS' employ.

Mr. Garcia 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." Labor Code section 206.5 further provides that " 'execution of a release' includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false."

During the relevant time period, BARNEYS required Mr. Garcia and other aggrieved employees to release their claims for unpaid wages as a condition of receiving their final paychecks. For example, prior to receiving his paychecks, BARNEYS required Mr. Garcia to sign a form attesting that, ". . . I have reviewed all my hours and I have verified they are all correct." BARNEYS compelled Mr. Garcia and other aggrieved employees to sign these false verifications when they, in fact, had not had all of their hours accurately recorded as a result of being required to work off-the-clock, including, but not limited to, work performed during unpaid meal periods.

BARNEYS' policy and practice of requiring Mr. Garcia and other aggrieved employees to release their claims for uncompensated hours worked and/or other pay owed to them as a condition to receiving their wages is in violation of California Labor Code section 206.5. Mr. Garcia and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

BARNEYS had a company-wide policy of requiring employees to purchase uniform items directly from the company. BARNEYS required Mr. Garcia and other aggrieved employees to wear an apron bearing BARNEYS' company logo, but did not provide Mr. Garcia and other aggrieved employees with an adequate number of these aprons, compelling them to purchase additional aprons directly from BARNEYS. For example, Mr. Garcia was forced to spend approximately \$50.00 to purchase

four (4) aprons directly from BARNEYS, but was not reimbursed for the costs of these uniform items.

BARNEYS' conduct of compelling and/or coercing Mr. Garcia and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Garcia 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

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

BARNEYS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because BARNEYS failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. Other aggrieved employees were required to report to work for their scheduled morning shifts, and then return later to complete their scheduled evening shifts. When this occurred, BARNEYS did not always pay other aggrieved employees an additional hour at minimum wage. At all relevant times, other aggrieved employees did not reside at BARNEYS' locations.

BARNEYS' failure to compensate other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations, Title 8, Section 11050(4)(C). 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, BARNEYS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because BARNEYS failed to pay Mr. Garcia 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 regular schedule.

BARNEYS had a company-wide practice of sending Mr. Garcia 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 Mr. Garcia and other aggrieved employees for half of their scheduled shift. Although Mr. Garcia and other aggrieved employees would report to work based on the schedule that BARNEYS provided to them, BARNEYS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, Mr. Garcia reported to work for his scheduled shift, but was told to go home because he was no longer needed. When this occurred, BARNEYS did not pay Mr. Garcia for at least half of his scheduled day's work or the required minimum reporting time pay. Accordingly, Mr. Garcia 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).

Mr. Garcia 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that subdivision 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

BARNEYS' California restaurant locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Garcia and other aggrieved employees during lulls in operation. BARNEYS could provide Mr. Garcia and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Garcia and other aggrieved employees to stand throughout the day.

BARNEYS did not provide Mr. Garcia and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Garcia and other aggrieved employees engaged in duties in which the nature of the work required standing, BARNEYS denied them the use of seats nearby during lulls in their work duties. Moreover, BARNEYS did not inform Mr. Garcia and other aggrieved employees of their rights to a seat or stool under California law.

As a result of BARNEYS' company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Garcia and other aggrieved employees were forced to stand during shifts and denied seats. BARNEYS' failure to provide suitable seating to Mr. Garcia and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BARNEYS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 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 No. 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, BARNEYS had a company-wide policy of requiring Mr. Garcia and other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but BARNEYS failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Garcia and other aggrieved employees were required to use their personal cellular phones for work-related tasks, including responding to calls from BARNEYS' management on their days off. For example, Mr. Garcia spent 10-15 minutes per month using his personal cellular phone to discuss work-related matters with his supervisor. Although BARNEYS required Mr. Garcia and other aggrieved employees to utilize their personal cellular phones to carry out their work-related duties, BARNEYS failed to reimburse them for this cost.

Second, BARNEYS had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, twice per week, other aggrieved employees were required to travel between BARNEYS' restaurants to retrieve and deliver restaurant supplies, such as cups and plates. Although BARNEYS required other aggrieved employees to use their own personal vehicles or obtain alternate transportation to complete their work-related duties, BARNEYS never reimbursed them for their travel expenses.

Third, during the relevant time period, BARNEYS, on a company-wide basis, forced Mr. Garcia and other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, Mr. Garcia was forced to purchase his own pens and notepads in order to take customer orders, spending \$6.00 per week on these items. Although BARNEYS required Mr. Garcia and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

Fourth, BARNEYS, on a company-wide basis, required Mr. Garcia and other aggrieved employees to obtain and pay for certain certifications, such as a California Food Handler Card, that were required for their continued employment, as well as associated costs such as training and/or examination fees. BARNEYS had a uniform policy of requiring employees to pay for and obtain these certifications in order to continue their employment with BARNEYS. Mr. Garcia complied with BARNEYS' mandate and spent approximately \$15 to obtain this certification. At no time did BARNEYS provide Mr. Garcia and other aggrieved employees with information on how to obtain reimbursement for these work-related expenses. Thus, BARNEYS failed to reimburse Mr. Garcia and other aggrieved employees for the costs of obtaining these certifications, including mandatory training and/or examination fees.

Fifth, BARNEYS, on a company-wide basis, expected Mr. Garcia and other aggrieved employees to report to work wearing clean uniforms bearing the company logo while simultaneously failing to provide employees with an adequate number of these uniforms. This forced Mr. Garcia and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. Due to the nature of restaurant work, Mr. Garcia's and other aggrieved employees' uniforms would become greasy, stained, and/or acquire an unpleasant odor, and Mr. Garcia and other aggrieved employees would be required to wash their uniform items separately and more frequently than they would otherwise, further increasing their overall laundry costs.

BARNEYS could have provided Mr. Garcia and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, and supplies, as well as an adequate number of uniforms and/or access to laundering services. Or, BARNEYS could have reimbursed employees for the costs of their cellular phone; mileage; travel expenses; tool, supply and/or equipment expenses; certification, training, and/or examination fees; and laundering expenses. Instead, BARNEYS passed these operating costs off onto Mr. Garcia and other aggrieved employees. At all relevant times, Mr. Garcia did not earn at least two (2) times the minimum wage.

Thus, BARNEYS 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. Mr. Garcia and other aggrieved employees are entitled to recover civil 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.” BARNEYS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Garcia’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Garcia seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Garcia, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BARNEYS for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Garcia 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 Mr. Garcia’s reasonable attempt to settle his dispute with BARNEYS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BARNEYS of Mr. Garcia’s aforementioned grievances and the proposed remedies as detailed below, while affording BARNEYS a reasonable opportunity to satisfy Mr. Garcia’s demands.

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

1. BARNEYS shall pay Mr. Garcia and all other aggrieved employees employed by BARNEYS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BARNEYS 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 reporting time pay.
3. BARNEYS shall conduct a survey or interview all current and former aggrieved employees in California who worked for BARNEYS 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; and the number of employees who were required to pay for cellular phone

expenses; mileage; travel expenses; tools, supplies, and/or equipment; certification, training, and examination fees; uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. BARNEYS 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 Labor Code sections 226.7, 512(a), 516, and 1198. BARNEYS 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 Labor Code sections 226.7, 516, and 1198.
5. BARNEYS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BARNEYS' benefit, including, but not limited to, costs of cellular phone expenses; mileage; travel expenses; tools, supplies, and/or equipment; certification, training, and examination fees; and uniform maintenance, as required by Labor Code section 2802.
6. BARNEYS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BARNEYS shall provide Mr. Garcia and all aggrieved employees employed by BARNEYS 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. BARNEYS shall cease the practice of requiring all aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks in violation of Labor Code section 206.5.
9. BARNEYS shall reimburse Mr. Garcia and all aggrieved employees for their costs and expenses incurred as a result of BARNEYS' conduct of compelling and/or coercing Mr. Garcia and other aggrieved employees to purchase goods from them in violation of California Labor Code section 450.
10. BARNEYS 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.
11. BARNEYS shall implement and provide suitable seating to all aggrieved employees.
12. BARNEYS 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.
13. BARNEYS 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, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Julian Quattlebaum', with a stylized flourish at the end.

Julian Quattlebaum

Copy: BARNEY'S COLLEGE, INC. (via U.S. Certified Mail); BARNEY'S PIEDMONT, INC. (via U.S. Certified Mail); BARNEY'S SAN FRANCISCO, INC. (via U.S. Certified Mail); BARNEY'S SAN VICENTE, INC. (via U.S. Certified Mail); BARNEY'S SOLANO, INC. (via U.S. Certified Mail); BARNEYS BRENTWOOD, INC. (via U.S. Certified Mail); BARNEYS SHATTUCK, INCORPORATED (via U.S. Certified Mail); BARNEY'S STEINER, LLC (via U.S. Certified Mail)

EXHIBIT 2



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JULIAN QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

July 9, 2021

VIA ONLINE SUBMISSION

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

Subject: *Oscar Mendoza v. Barney's College, Inc., et al.*

Dear PAGA Administrator:

This office represents Oscar Mendoza in connection with his claims under the California Labor Code. Mr. Mendoza was an employee of BARNEY'S COLLEGE, INC.; BARNEY'S PIEDMONT, INC.; BARNEY'S SAN FRANCISCO, INC.; BARNEY'S SAN VICENTE, INC.; BARNEY'S SOLANO, INC.; BARNEYS BRENTWOOD, INC.; BARNEYS SHATTUCK, INCORPORATED; and BARNEY'S STEINER, LLC. For the purpose of this letter, Mr. Mendoza collectively refers to these entities as "BARNEYS."

The employers may be contacted directly at the addresses below:

BARNEY'S COLLEGE, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEY'S SOLANO, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEY'S PIEDMONT, INC.
525 MARGURITA AVE
SANTA MONICA CA 90402

BARNEYS BRENTWOOD, INC.
225 26TH ST#18
SANTA MONICA CA 90402

BARNEY'S SAN FRANCISCO, INC.
1591 SOLANO AVE
BERKELEY CA 94707

BARNEYS SHATTUCK, INCORPORATED
1591 SOLANO AVE
BERKELEY CA 94707

BARNEY'S SAN VICENTE, INC.
11660 SAN VICENTE BLVD
LOS ANGELES CA 90049

BARNEY'S STEINER, LLC
525 MARGURITA AVE
SANTA MONICA CA 90402

Mr. Mendoza 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"). Mr. Mendoza seeks relief on behalf

of himself, the State of California, and other persons who are or were employed by BARNEYS 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.

BARNEYS employed Mr. Mendoza as an hourly paid, non-exempt Busser from approximately February 2001 to September 2020. Most recently, Mr. Mendoza worked for BARNEYS at its restaurant located at 5819 College Avenue, Oakland, California 94618. During his employment, Mr. Mendoza typically worked six (6) hours or more per day, five (5) days per week, from 9:00 a.m. to 3:00 p.m. At the time Mr. Mendoza’s employment with BARNEYS ended, he earned approximately \$14.14 per hour. His job duties included, without limitation, organizing inventory, washing dishes, preparing drinks, and cleaning and maintaining the dining premises.

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

BARNEYS’ Company-Wide and Uniform Payroll and HR Practices

BARNEY’S COLLEGE, INC.; BARNEY’S PIEDMONT, INC.; BARNEY’S SAN FRANCISCO, INC.; BARNEY’S SAN VICENTE, INC.; BARNEY’S SOLANO, INC.; BARNEYS BRENTWOOD, INC.; and BARNEYS SHATTUCK, INCORPORATED are California corporations, and BARNEY’S STEINER, LLC is a California limited liability company. Together, BARNEYS owns and operates a chain of restaurants in Northern and Southern California. BARNEYS has approximately seven (7) Barney’s Gourmet Hamburgers restaurant locations in California. Upon information and belief, BARNEYS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Berkeley, Los Angeles, or Santa Monica, California, for all non-exempt, hourly paid employees working for BARNEYS in California, including Mr. Mendoza and other aggrieved employees. At all relevant times, BARNEYS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mendoza and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Mendoza’s experience and counsel’s review of those records currently available relating to Mr. Mendoza’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, Mr. Mendoza reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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.

BARNEYS willfully failed to pay all overtime wages owed to Mr. Mendoza and other aggrieved employees. During the relevant time period, Mr. Mendoza and/or 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, BARNEYS had, and continues to have, a company-wide policy and/or practice of requiring Mr. Mendoza and/or other aggrieved employees to perform tasks off-the-clock before and after their shifts and/or on their days off. Mr. Mendoza and other aggrieved employees were required to remain under the control of BARNEYS and perform work-related duties and errands off-the-clock. For example, Mr. Mendoza was required to spend five (5) minutes twice per week stocking inventory shipments prior to clocking in for his shift, and 10 minutes once per week restocking supplies after his scheduled shift had ended. In addition, twice per week, Mr. Mendoza was instructed to travel to other BARNEYS restaurants to deliver supplies after he had clocked out. As a further example, once per week, other aggrieved employees were required to spend 15-30 minutes off-the-clock folding napkins, cleaning the restaurant premises, or remaining on duty until other employee(s) arrived for their shifts. Furthermore, other aggrieved employees were required to answer phone calls from management on their days off. For example, other aggrieved employees were required to answer calls from management 2-3 times per month to discuss tasks that they had completed during their previous shifts. BARNEYS failed to track the time Mr. Mendoza and other aggrieved employees spent completing work, running errands, and/or responding to phone calls from management, and thus, Mr. Mendoza and other aggrieved employees received no compensation for this time.

Second, BARNEYS implemented, on a company-wide basis, an employer-imposed requirement that Mr. Mendoza and other aggrieved employees undergo mandatory health screenings and temperature checks before their scheduled shifts. Mr. Mendoza and other aggrieved employees followed BARNEYS’ instructions and completed the required health screenings before clocking in for their shifts. Even though BARNEYS required these health screenings, BARNEYS did not provide Mr. Mendoza and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory health screenings and temperature checks. Mr. Mendoza and other aggrieved employees spent approximately five (5) minutes answering mandatory health screening questions and having their temperatures checked before BARNEYS permitted them to clock in, but BARNEYS did not compensate them for the time they remained under BARNEYS’ control.

Third, BARNEYS had, and continues to have, a company-wide policy and/or practice of requiring Mr. Mendoza and other aggrieved employees to complete and obtain work-related trainings and certifications off-the-clock. As a condition of continuing their employment with BARNEYS, Mr. Mendoza and other aggrieved employees were required to spend time obtaining specific certifications, such as a California Food Handler Card, but were not paid for this time. For example, Mr. Mendoza spent two (2) hours completing the training for this mandatory certification while off-the-clock. Thus, BARNEYS failed to track the time Mr. Mendoza and other aggrieved employees spent completing and obtaining mandatory certifications, and Mr. Mendoza and other aggrieved employees received no compensation for this time.

Fourth, BARNEYS had and continues to have, a company-wide policy and/or practice of understaffing its restaurants while assigning heavy workloads, which led to a failure to provide Mr. Mendoza and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Mr. Mendoza and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Mendoza was required to work through his meal period once per month in order to meet customer demand. In addition, management interrupted Mr. Mendoza's meal periods three (3) times per week for 5-15 minutes to discuss daily work objectives. As further examples, other aggrieved employees were required to work through their meal periods on holidays and were instructed by management to return from their meal periods early at least once per week to work through approximately 20 minutes of their meal periods to service customers. Furthermore, BARNEYS had a practice of failing to schedule or adhere to a schedule of meal periods, which further caused Mr. Mendoza and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, on information and belief, because BARNEYS frowned upon employees accruing meal period penalties, BARNEYS pressured Mr. Mendoza and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that BARNEYS would otherwise owe. Thus, Mr. Mendoza and other aggrieved employees performed work during meal periods for which they were not paid.

BARNEYS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Mendoza and/or other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mendoza and/or other aggrieved employees sometimes 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, Mr. Mendoza and/or other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, BARNEYS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BARNEYS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BARNEYS 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, BARNEYS failed to pay all overtime wages by paying a lower overtime rate than required.

BARNEYS' failure to pay Mr. Mendoza and/or other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Mendoza and/or 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").

As stated above, BARNEYS required Mr. Mendoza and other aggrieved employees to perform work off-the-clock, including completing tasks before and after their shifts and/or during meal periods, running work-related errands, responding to phone communications from supervisors, undergoing mandatory health screenings, and/or completing and obtaining mandatory work-related trainings and certifications, but did not compensate them for this time.

In addition, as stated above, due to BARNEYS' company-wide practice of understaffing, assignment of heavy workloads, failure to schedule or adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Mendoza and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Moreover, as set forth above, on information and belief, BARNEYS systematically failed to pay Mr. Mendoza and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded.

Thus, BARNEYS did not pay at least minimum wages for all hours worked by Mr. Mendoza and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BARNEYS 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, BARNEYS regularly failed to pay at least minimum wages to Mr. Mendoza 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. Mr. Mendoza 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, 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.

As stated above, BARNEYS had, and continues to have, a company-wide policy and/or practice of understaffing its locations, which, combined with the assignment of heavy workloads and failure to schedule or adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and prevented Mr. Mendoza and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

Moreover, as stated, upon information and belief, because BARNEYS frowned upon employees accruing meal period penalties, BARNEYS' management pressured Mr. Mendoza and other aggrieved employees to clock out for meal periods and continue working and/or would adjust their time records, in order to strictly limit meal penalties that would need to be paid by BARNEYS. For example, Mr. Mendoza was instructed to clock out and continue working by BARNEYS' management, and/or would have his time modified to reflect compliant meal periods if he failed to clock himself out. Thus, Mr. Mendoza and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the workload.

BARNEYS' practices and policies prevented Mr. Mendoza and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Mendoza and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, as stated, Mr. Mendoza was required to work through his meal periods once per month in order to meet customer demand and had his meal periods interrupted by management three (3) times per week to discuss daily work objectives. Specifically, Mr. Mendoza's timepunch records reflect that on August 7, 2020, Mr. Mendoza worked 6.03 hours and did not receive a meal period, but BARNEYS did not pay him a meal period premium. As further examples, other aggrieved employees were required to miss their meal periods altogether when working during holidays, were instructed by management to cut their meal periods short once per week, and had their meal periods interrupted once per week to answer calls from management to the restaurant's phone line.

Additionally, BARNEYS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Mendoza 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.

Moreover, BARNEYS had a company-wide policy of requiring newly hired employees to sign blanket meal period waivers at or near their time of hire. BARNEYS took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and, on that basis, did not provide them with all first meal periods to which they were entitled. Specifically, BARNEYS' "Meal Period Waiver – Barney's Gourmet Hamburgers (Hourly Employees)" form provides that the waiver remains in effect until the employee provides his or her manager with written notice of his or her decision to revoke the waiver. BARNEYS' presumption that first meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Mendoza and other aggrieved employees from taking all first 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 BARNEYS 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 BARNEYS' obligation to provide Mr. Mendoza and other aggrieved employees with meal periods did not arise until BARNEYS had employed them for a full five (5) hours.

BARNEYS knew or should have known that as a result of its policies and/or practices, that Mr. Mendoza and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. BARNEYS further knew or should have known that it did not pay Mr. Mendoza and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted because, on information and belief, BARNEYS adjusted employee time records to reflect compliant meal periods when compliant meal periods were not taken.

Furthermore, BARNEYS has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Mendoza and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BARNEYS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BARNEYS did not pay other aggrieved employees at the correct rate of pay for premiums because BARNEYS 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, BARNEYS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mendoza 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, 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, BARNEYS regularly failed to authorize and permit Mr. Mendoza and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, BARNEYS' company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Mendoza and other aggrieved employees from being relieved of all duty to take their rest periods. Moreover, BARNEYS failed to schedule rest periods, which, coupled with BARNEYS' failure to provide adequate rest period coverage, further led to Mr. Mendoza and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Moreover, on and information and belief, BARNEYS maintained a company-wide on-premises rest period policy, which mandated that Mr. Mendoza and other aggrieved employees remain on BARNEYS' premises during their rest periods. Because Mr. Mendoza and 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 to run brief personal errands or order food from a nearby restaurant. Thus, BARNEYS effectively maintained control over Mr. Mendoza and other aggrieved employees during rest periods.

As a result of BARNEYS' practices and policies, Mr. Mendoza 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, Mr. Mendoza missed his rest periods five (5) times per week due to a lack of rest period coverage. In addition, Mr. Mendoza's rest periods were interrupted and cut short three (3) times per week by BARNEYS' management to discuss daily work objectives. As a further example, other aggrieved employees missed and had their rest periods interrupted due to heavy workloads and requests or phone calls on the company landline from BARNEYS' management.

BARNEYS 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. Alternatively, to the extent that BARNEYS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BARNEYS did not pay other aggrieved employees at the correct rate of pay for premiums because BARNEYS 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, BARNEYS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mendoza 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. BARNEYS has not provided Mr. Mendoza 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 wage 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).

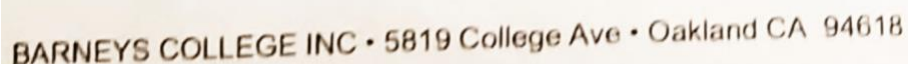
During the relevant time period, BARNEYS has knowingly and intentionally provided Mr. Mendoza and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BARNEYS issued uniform wage statements to Mr. Mendoza and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity of the employer; 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, BARNEYS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because BARNEYS did not record the time Mr. Mendoza 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), BARNEYS did not list the correct amount of gross wages and net wages earned by Mr. Mendoza and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BARNEYS failed to accurately list the total number of hours worked by Mr. Mendoza 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).

Second, because BARNEYS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, BARNEYS did not list the correct amount of gross wages

in compliance with section 226(a)(1). For the same reason, BARNEYS also failed to list the correct amount of net wages in violation of section 226(a)(5). BARNEYS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay, in violation of section 226(a)(9).

Third, and separate from these violations, BARNEYS issued uniform wage statements to Mr. Mendoza and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Mendoza's and other aggrieved employees' wage statements incorrectly list the employer's address as "5819 College Ave, Oakland, CA 94618," but, according to the California Secretary of State's website, "BARNEY'S COLLEGE, INC." is listed at a different address, "525 Margurita Ave., Santa Monica, CA 90402." *See excerpt from example pay stub below.*



BARNEYS COLLEGE INC • 5819 College Ave • Oakland CA 94618

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 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 of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; 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), BARNEYS willfully failed to maintain accurate payroll records for Mr. Mendoza 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, BARNEYS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Mendoza and other aggrieved employees, in violation of section 1198. As stated, BARNEYS engaged in a company-wide practice and/or policy of falsifying Mr. Mendoza'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 Mr. Mendoza and other aggrieved employees. Furthermore, in light of BARNEYS' failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BARNEYS kept no records of meal start and end times for second meal periods.

Because BARNEYS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mendoza 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, Mr. Mendoza and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mendoza 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, BARNEYS willfully failed to pay Mr. Mendoza and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Mendoza 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.

On information and belief, BARNEYS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Mendoza was terminated on or about September 21, 2020. However, BARNEYS did not provide Mr. Mendoza his final wages until September 25, 2020.

In addition, BARNEYS willfully failed to pay Mr. Mendoza and other aggrieved employees who are no longer employed by BARNEYS the earned and unpaid wages set forth above, 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 BARNEYS' employ.

Mr. Mendoza 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee." Labor Code section 206.5 further provides that " 'execution of a release' includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false."

During the relevant time period, BARNEYS required Mr. Mendoza and other aggrieved employees to release their claims for unpaid wages as a condition of receiving their final paychecks. For example, prior to receiving his paychecks, BARNEYS required Mr. Mendoza to sign a form attesting that, "... I have reviewed all my hours and I have verified they are all correct." BARNEYS compelled Mr. Mendoza and other aggrieved employees to sign these false verifications when they, in fact, had not had all of their hours accurately recorded as a result of being required to work off-the-clock, including, but not limited to, work performed during unpaid meal periods.

BARNEYS' policy and practice of requiring Mr. Mendoza and other aggrieved employees to release their claims for uncompensated hours worked and/or other pay owed to them as a condition to receiving their wages is in violation of California Labor Code section 206.5. Mr. Mendoza and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

BARNEYS had a company-wide policy of requiring employees to purchase uniform items directly from the company. BARNEYS required Mr. Mendoza and other aggrieved employees to wear an apron bearing BARNEYS' company logo, but did not provide other aggrieved employees with an

adequate number of these aprons, compelling them to purchase additional aprons directly from BARNEYS. For example, other aggrieved employees were forced to spend \$15.00 per apron to purchase additional ones directly from BARNEYS, but were not reimbursed for the costs of these uniform items.

BARNEYS' conduct of compelling and/or coercing other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. 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 4(C) – Failure to Pay Split-Shift Premiums

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

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

BARNEYS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because BARNEYS failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. Other aggrieved employees were required to report to work for their scheduled morning shifts, and then return later to complete their scheduled evening shifts. When this occurred, BARNEYS did not always pay other aggrieved employees an additional hour at minimum wage. At all relevant times, other aggrieved employees did not reside at BARNEYS' locations.

BARNEYS' failure to compensate other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations, Title 8, Section 11050(4)(C). 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, BARNEYS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because BARNEYS failed to pay 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 regular schedule.

BARNEYS had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees would report to work based on the schedule that BARNEYS provided to them, BARNEYS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, other aggrieved employees reported to work for their scheduled shifts, but were told to go home because they was no longer needed. When this occurred, BARNEYS did not pay other aggrieved employees for at least half of their scheduled day’s work or the required minimum reporting time pay. Accordingly, 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).

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 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties

take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

BARNEYS’ California restaurant locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Mendoza and other aggrieved employees during lulls in operation. BARNEYS could provide Mr. Mendoza and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Mendoza and other aggrieved employees to stand throughout the day.

BARNEYS did not provide Mr. Mendoza and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Mendoza and other aggrieved employees engaged in duties in which the nature of the work required standing, BARNEYS denied them the use of seats nearby during lulls in their work duties. Moreover, BARNEYS did not inform Mr. Mendoza and other aggrieved employees of their rights to a seat or stool under California law.

As a result of BARNEYS’ company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Mendoza and other aggrieved employees were forced to stand during shifts and denied seats. BARNEYS’ failure to provide suitable seating to Mr. Mendoza and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Mendoza and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring BARNEYS into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 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 No. 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, BARNEYS had a company-wide policy of requiring other aggrieved employees to utilize their own personal cellular phones to carry out their job duties, but BARNEYS failed to reimburse them for the costs of their work-related cellular phone expenses. Other aggrieved employees were required to use their personal cellular phones for work-related tasks, including responding to calls from BARNEYS’ management on their days off. For example, other aggrieved employees spent 10-15 minutes per month using their personal cellular phones to discuss work-related matters with BARNEYS’ management. Although BARNEYS required other

aggrieved employees to utilize their personal cellular phones to carry out their work-related duties, BARNEYS failed to reimburse them for this cost.

Second, BARNEYS had a company-wide policy of requiring Mr. Mendoza and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, twice per week, Mr. Mendoza was required to travel between BARNEYS' restaurants to retrieve and deliver restaurant supplies, such as cups and plates. Although BARNEYS required Mr. Mendoza and other aggrieved employees to use their own personal vehicles or obtain alternate transportation to complete their work-related duties, BARNEYS never reimbursed them for their travel expenses.

Third, during the relevant time period, BARNEYS, on a company-wide basis, forced other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, other aggrieved employees were forced to spend \$6.00 per week to purchase their own pens and notepads in order to take customer orders. Although BARNEYS required other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

Fourth, BARNEYS, on a company-wide basis, required Mr. Mendoza and other aggrieved employees to obtain and pay for certain certifications, such as a California Food Handler Card, that were required for their continued employment, as well as associated costs such as training and/or examination fees. BARNEYS had a uniform policy of requiring employees to pay for and obtain these certifications in order to continue their employment with BARNEYS. Mr. Mendoza complied with BARNEYS' mandate and spent approximately \$15 to obtain this certification. At no time did BARNEYS provide Mr. Mendoza and other aggrieved employees with information on how to obtain reimbursement for these work-related expenses. Thus, BARNEYS failed to reimburse Mr. Mendoza and other aggrieved employees for the costs of obtaining these certifications, including mandatory training and/or examination fees.

Fifth, BARNEYS, on a company-wide basis, expected Mr. Mendoza and other aggrieved employees to report to work wearing clean uniforms bearing the company logo while simultaneously failing to provide employees with an adequate number of these uniforms. This forced Mr. Mendoza and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. Due to the nature of restaurant work, Mr. Mendoza's and other aggrieved employees' uniforms would become greasy, stained, and/or acquire an unpleasant odor, and Mr. Mendoza and other aggrieved employees would be required to wash their uniform items separately and more frequently than they would otherwise, further increasing their overall laundry costs.

BARNEYS could have provided Mr. Mendoza and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, and supplies, as well as an adequate number of uniforms and/or access to laundering services. Or, BARNEYS could have reimbursed employees for the costs of their cellular phone; mileage; travel expenses; tool, supply and/or equipment expenses; certification, training, and/or examination fees; and laundering expenses. Instead, BARNEYS passed these operating costs off onto Mr. Mendoza and other aggrieved employees. At all relevant times, Mr. Mendoza did not earn at least two (2) times the minimum wage.

Thus, BARNEYS 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. Mr. Mendoza and other aggrieved employees are entitled to recover civil 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." BARNEYS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mendoza's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mendoza seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mendoza, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BARNEYS for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Mendoza 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 Mr. Mendoza's reasonable attempt to settle his dispute with BARNEYS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BARNEYS of Mr. Mendoza's aforementioned grievances and the proposed remedies as detailed below, while affording BARNEYS a reasonable opportunity to satisfy Mr. Mendoza's demands.

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

1. BARNEYS shall pay Mr. Mendoza and all other aggrieved employees employed by BARNEYS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BARNEYS 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 reporting time pay.

3. BARNEYS shall conduct a survey or interview all current and former aggrieved employees in California who worked for BARNEYS 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; and the number of employees who were required to pay for cellular phone expenses; mileage; travel expenses; tools, supplies, and/or equipment; certification, training, and examination fees; uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. BARNEYS 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 Labor Code sections 226.7, 512(a), 516, and 1198. BARNEYS 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 Labor Code sections 226.7, 516, and 1198.
5. BARNEYS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BARNEYS' benefit, including, but not limited to, costs of cellular phone expenses; mileage; travel expenses; tools, supplies, and/or equipment; certification, training, and examination fees; and uniform maintenance, as required by Labor Code section 2802.
6. BARNEYS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BARNEYS shall provide Mr. Mendoza and all aggrieved employees employed by BARNEYS 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. BARNEYS shall cease the practice of requiring all aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks in violation of Labor Code section 206.5.
9. BARNEYS shall reimburse all aggrieved employees for their costs and expenses incurred as a result of BARNEYS' conduct of compelling and/or coercing other aggrieved employees to purchase goods from them in violation of California Labor Code section 450.
10. BARNEYS 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.
11. BARNEYS shall implement and provide suitable seating to all aggrieved employees.
12. BARNEYS 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.

13. BARNEYS 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, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Julian Quattlebaum', with a stylized flourish at the end.

Julian Quattlebaum

Copy: BARNEY'S COLLEGE, INC. (via U.S. Certified Mail); BARNEY'S PIEDMONT, INC. (via U.S. Certified Mail); BARNEY'S SAN FRANCISCO, INC. (via U.S. Certified Mail); BARNEY'S SAN VICENTE, INC. (via U.S. Certified Mail); BARNEY'S SOLANO, INC. (via U.S. Certified Mail); BARNEYS BRENTWOOD, INC. (via U.S. Certified Mail); BARNEYS SHATTUCK, INCORPORATED (via U.S. Certified Mail); BARNEY'S STEINER, LLC (via U.S. Certified Mail)