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THE SUPERIOR COURT
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CASE NUMBER:

RG21104787

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8 Attorneys for Plaintiff,

9 REYNA JANETTE MUNOZ SANTOS, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**11 **FOR THE COUNTY OF ALAMEDA**12 **(UNLIMITED JURISDICTION)**13 REYNA JANETTE MUNOZ SANTOS, on
14 behalf of herself, all others similarly situated,
15 and as an "aggrieved employee" on behalf of
16 other "aggrieved employees" under the Labor
17 Code Private Attorneys General Act of 2004,18 *Plaintiff,*

19 vs.

20 AKATETE, INC., a California corporation; and
21 DOES 1-50, inclusive,22 *Defendants.*

Case No.: RG21104787

FIRST AMENDED CLASS ACTION**COMPLAINT FOR:**

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED**SPIVAK LAW**

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1 Plaintiff, REYNA JANETTE MUNOZ SANTOS (hereafter "Plaintiff"), on behalf of
2 herself and all others similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendant AKATETE,
5 INC., a California corporation, and DOES 1-50, inclusive (collectively "Defendants") for alleged
6 violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001
(hereafter "the Wage Order"), and the Business and Professions Code.

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
8 and other similarly situated current and former employees in California for unpaid wages and
9 other related relief. These claims are based on Defendants' alleged failures to: (1) Provide all
10 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
11 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
12 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
13 itemized written wage statements, (5) Timely pay all final wages upon termination of
14 employment, and (6) Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages
15 and related relief through this class action.

16 JURISDICTION AND VENUE

17 3. This court has subject matter jurisdiction because the aggregate claims of
18 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

19 4. There is no basis for federal question subject matter jurisdiction in this case.
20 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
21 law.

22 5. There is also no basis for federal diversity jurisdiction in this case.

23 6. Venue is proper in Alameda County pursuant to California Code of Civil
24 Procedure § 395(a) and § 395.5 in that liability arose in Alameda County because at least some
25 of the transactions that are the subject matter of this Complaint occurred therein and/or because
26 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

27 PARTIES

28 7. Plaintiff REYNA JANETTE MUNOZ SANTOS is a resident of California. In
approximately April 2015, Defendants began to employ Plaintiff at their Bronco Billy's Pizza
Palace restaurant located at 26775 Hayward Blvd, Hayward, California as an hourly cook.



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1 Defendants employed her continuously from that date until on or about July 9, 2020, when
2 Defendants closed the restaurant due to the Covid-19 pandemic. Defendants reopened the
3 restaurant one week later but declined to rehire Plaintiff.

4 8. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
5 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
6 Labor Code § 2699(c).

7 9. Defendant AKATETE, INC., is a corporation organized and existing under the
8 laws of California and also a citizen of California based on Plaintiff's information and belief.

9 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
10 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
11 is informed and believes and thereon alleges that said Defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
14 when ascertained.

15 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
17 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
18 and scope of such agency or employment and with the approval and ratification of each of the
19 other Defendants.

20 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
22 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
23 described class in accordance with applicable laws as alleged herein.

24 13. Plaintiff is informed and believes and thereon alleges that each and every one of
25 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
26 each acting as agents and/or employees, and/or under the direction and control of each of the other
27 Defendants, and that said acts and failures to act were within the course and scope of said agency,
28 employment, and/or direction and control.

CLASS ALLEGATIONS

14. This action has been brought and may be maintained as a class action pursuant to
California Code of Civil Procedure § 382 because there is a well-defined community of interest



1 among the persons who comprise the readily ascertainable class defined below and because
2 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
3 action.

4 15. **Class Definition:** The Class is defined as follows: All individuals currently and
5 formerly employed in California as non-exempt, hourly employees by Defendants, including but
6 not limited to food preps, cooks, waiters and persons in similar positions at any time during the
7 period beginning four years prior to the filing of this action and ending on the date that final
8 judgment is entered in this action ("Class" or "Class Members").

9 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
10 right to amend or modify the class definition with greater specificity, by further division into
11 subclasses and/or by limitation to particular issues.

12 17. **Numerosity:** The Class Members are so numerous that the individual joinder of
13 each individual Class Member is impractical. While Plaintiff does not currently know the exact
14 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
15 minimum required for numerosity under California laws.

16 18. **Commonality and Predominance:** Common questions of law and fact exist as to
17 all Class Members and predominate over any questions which affect only individual Class
18 Members. These questions include, but are not limited to:

19 A. Whether Defendants failed to provide the Class Members with all meal and
20 rest periods in compliance with California law;

21 B. Whether Defendants weekly failed to pay all wages earned to the Class
22 Members for all hours worked at the correct rates of pay;

23 C. Whether Defendants failed to indemnify the Class Members for the
24 reasonable expenses they incurred during the course of performing their duties;

25 D. Whether Defendants knowingly and intentionally failed to provide the
26 Class Members with accurate written wage statements;

27 E. Whether Defendants willfully failed to provide the Class Members with
28 timely final wages upon termination of employment;

F. Whether Defendants engaged in unfair competition within the meaning of
Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

G. Whether Class Members are entitled to restitution of money or property



1 that Defendants may have acquired from them through alleged Labor Code violations.

2 19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
3 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
4 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
5 Code, the Wage Order, and the Business and Professions Code.

6 20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
7 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
8 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
9 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
10 Members.

11 21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
12 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
13 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
14 Plaintiff and absent Class Members.

15 22. **Superiority:** A class action is vastly superior to other available means for fair and
16 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
17 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
18 and efficiently prosecute their common claims in a single forum without the unnecessary
19 duplication of effort and expense that numerous individual actions would entail. In addition, the
20 monetary amounts due to many individual Class Members are likely to be relatively small and
21 would thus make it difficult, if not impossible, for individual Class Members to both seek and
22 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
23 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
24 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

25 **STATEMENT OF FACTS**

26 23. In approximately April 2015, Defendants began to employ Plaintiff at their Bronco
27 Billy's Pizza Palace restaurant located at 26775 Hayward Blvd, Hayward, California as an hourly
28 cook. Defendants employed her continuously from that date until on or about July 9, 2020, when
29 Defendants closed the restaurant due to the Covid-19 pandemic. Defendants reopened the
30 restaurant one week later but declined to rehire Plaintiff.

31 24. At all relevant times, Defendants issued wages to Plaintiff and the Class Members



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1 on a semi-monthly basis and paid them at an hourly rate of pay. At all relevant times, Defendants
2 classified Plaintiff and the Class Members as non-exempt employees entitled to the protections
3 of both the Labor Code and the Wage Order.

4 25. Defendants failed to compensate Plaintiff and the Class Members for all hours
5 worked at the correct rates of pay, including overtime. Plaintiff and the Class Members often
6 worked five (5) to six (6) days in a workweek, and between eight (8) to fourteen (14) hours per
7 workday. At all relevant times, Plaintiff and the Class Members worked over eight (8) hours in
8 one workday and over forty (40) hours in one workweek. Defendants, however, failed to pay
9 Plaintiff and the Class Members overtime wages of at least one and a half 1½ times their hourly
10 rates of pay for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in
11 a day. Additionally, Defendants failed to pay Plaintiff and the Class Members at least twice their
12 hourly rates of pay when they worked over twelve (12) hours in a workday.

13 26. At all relevant times, Defendants required Plaintiff and the Class Members to
14 perform work while clocked-out and failed to compensate them for this time. Due to the workload
15 and failure to hire sufficient staff members, Defendants often requested that Plaintiff and the Class
16 Members continue to work after they clocked-out because other employees did not arrive for their
17 shifts on time. Defendants failed to compensate Plaintiff and the Class Members for this work
18 performed off-the-clock.

19 27. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
20 with all timely meal periods. Due to the workload and failure to hire sufficient staff members,
21 Defendants denied Plaintiff and the Class Members their 30-minute off-duty meal period within
22 the first five hours of work. Defendants also denied 30-minute off-duty meal periods to Plaintiff
23 and the Class Members because Defendants only allowed them to take a 20-minute break once a
24 day. Defendants required Plaintiff and the Class Members to manually log-in their hours worked
25 on a handwritten timesheet at their end of their shifts. Defendants instructed Plaintiff and the
26 Class Members to only indicate their clock-in and clock-out times without entering their meal
27 periods.

28 28. Moreover, Defendants failed to authorize and permit Plaintiff and the Class
Members with rest periods in violation of California law. Due to high workload and low staffing
levels, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-
minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants



1 did not seek an exemption from the rest period protections of the Wage Order from the California
2 Divisions of Labor Standards Enforcement.

3 29. Defendants failed to hire sufficient staff members to cover and support Plaintiff
4 and the Class Members so they could take duty-free, ten-minute rest periods and duty-free, 30-
5 minute meal periods. Furthermore, Defendants failed to pay premium wages for days on which
6 they failed to provide Plaintiff and the Class Members with timely meal periods. Defendants also
7 failed to pay premium wages for days on which they failed to provide Plaintiff and the Class
8 Members with timely rest periods.

9 30. At all relevant times, Defendants required Plaintiff and the Class Members to incur
10 certain business expenses in the course of performing their duties. On several occasions,
11 Defendants required Plaintiff and the Class Members to drive in their personal vehicles to
12 Defendants' restaurant in Fremont to pick up items that the Hayward locations ran out of. Plaintiff
13 and the Class Members picked-up products such as bread and cheese, among others. On several
14 occasions, Defendants also required Plaintiff and the Class Members to drive to the grocery store
15 to buy vegetables, condiments and contained for the restaurant. Defendants did not reimburse
16 Plaintiff and the Class Members for such mileage expenses, nor offer them transportation for such
17 tasks.

18 31. Defendants failed to issue to Plaintiff and the Class Members complete and
19 accurate wage statements as a result of their failure to state all hours worked at the correct rates
20 of pay, and all wages earned including rest period and meal period premium wages. Defendants
21 also failed to timely pay Plaintiff and the Class Members all earned wages described above during
22 and at the conclusion employment. Moreover, Defendants failed to maintain accurate employee
23 records of Plaintiff and the Class Members.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

26 **(Lab. Code §§ 226.7, 512, and 1198)**

27 **(By Plaintiff and the Class against all Defendants)**

28 32. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

33. At all relevant times during the applicable limitations period, Plaintiff and the
Class Members have been employees of Defendants and entitled to the benefits and protections

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of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

34. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

35. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

36. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided."

37. In relevant part, § 11 of the Wage Order states:



Meal Periods

(A) "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided."

38. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

39. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

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1 40. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
3 fraction thereof.

4 41. Defendants intentionally failed to provide Plaintiff and the Class Members with
5 all required 30-minute duty-free meal periods and 10-minute rest periods free from any work
6 duties in accordance with the Wage Order.

7 42. At all relevant times, Defendants failed to provide Plaintiff and the Class
8 Members with all timely 30-minute duty-free meal periods within the first five hours of work.
9 Defendants also denied Plaintiff and the Class Members their 30-minute off-duty meal periods
10 because Defendants only allowed them to take a 20-minute break once per day. Moreover,
11 Defendants failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest
12 breaks every four hours worked or major fraction thereof as required by the Wage Order.
13 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
14 Plaintiff and the Class Members with timely meal and rest periods.

15 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
17 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
18 breaks required by California law.

19 44. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
20 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
21 wages owed for all meal periods and rest breaks not provided to them.

22 45. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
23 the Class Members are entitled to premium wages for workdays in which one or more off-duty
24 meal periods were not provided to them, and for workdays in which one or more rest breaks were
25 not provided to them.

26 ///

27 **SECOND CAUSE OF ACTION**

28 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

46. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.



47. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

48. § 2 of the Wage Order defines "hours worked" 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."

49. § 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

50. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

51. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall



1 be compensated at the rate of no less than one and one-half times the regular rate
2 of pay for an employee. Any work in excess of 12 hours in one day shall be
3 compensated at the rate of no less than twice the regular rate of pay for an
4 employee. In addition, any work in excess of eight hours on any seventh day of a
5 workweek shall be compensated at the rate of no less than twice the regular rate
6 of pay of an employee. Nothing in this § requires an employer to combine more
7 than one rate of overtime compensation in order to calculate the amount to be paid
8 to an employee for any hour of overtime work.

9 52. Labor Code § 1194 invalidates any agreement between an employer and an
10 employee to work for less than the minimum wage required under the applicable Wage Order.

11 53. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
12 than the minimum wage required under the applicable Wage Order for all hours worked during a
13 payroll period.

14 54. Labor Code § 1198 makes it unlawful for an employer to employ an employee
15 under conditions that violate the Wage Order.

16 55. In conjunction, these provisions of the Labor Code require employers to pay non-
17 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
18 worked, including unrecorded hours when the employer knew or reasonably should have known
19 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
20 Cal.4th 575, 585.)

21 56. At all relevant times during the applicable limitations period, Defendants failed to
22 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
23 overtime wages for all overtime hours they worked at the correct rates of pay, including overtime
24 wages for all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and
25 double their hourly rates of pay for all hours worked in excess of twelve (12) hours in a workday.
26 Defendants also failed to compensate Plaintiff and the Class Members for all off-the-clock hours
27 they worked at the correct rates of pay.

28 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked as required by
California law.

58. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
Members have suffered damages, in an amount subject to proof, to the extent they were not paid



1 the full amount of wages earned during each pay period during the applicable limitations period,
2 including minimum and overtime wages.

3 59. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and Class Members,
4 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
5 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
6 to proof.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO INDEMNIFY**

9 **(Lab. Code §§ 1198 & 2802)**

10 **(By Plaintiff and the Class against all Defendants)**

11 60. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 61. At all relevant times, Plaintiff and the Class Members have been non-exempt
13 employees of Defendants and entitled to the benefits and protections of the California Labor Code
14 §§ 1198 and 2802 and the Wage Order.

15 62. In pertinent part, California Labor Code § 2802(a) states:

16 "An employer shall indemnify his or her employee[s] for all
17 necessary expenditures incurred by the employee in direct
18 consequence of the discharge of his or her duties."

19 63. California Labor Code § 1198 prohibits employers from employing their
20 employees under conditions prohibited by the Wage Order.

21 64. At all relevant times during the applicable limitations period, Defendants required
22 Plaintiff and the Class Members to drive to Defendants' restaurant in Fremont to pick up items
23 that the Hayward location ran out of. Plaintiff and the Class Members picked-up products such
24 as bread and cheese, among others. On several occasions, Defendants also required Plaintiff and
25 the Class Members to drive to the grocery store to buy vegetables, condiments and containers for
26 the restaurant. Defendants did not reimburse Plaintiff and the Class Members for such mileage
27 expenses.

28 65. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
during the course of performing their duties.

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1 66. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
2 Members are entitled to reimbursement for all necessary expenditures and losses and interest
3 thereon, due and owing to them within four years of the date of the filing of the Complaint until
4 the entry of judgment.

5 67. Accordingly, with respect to this cause of action, on behalf of herself and the Class
6 Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees
7 pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

10 **(Lab. Code § 226)**

11 **(By Plaintiff and the Class against all Defendants)**

12 68. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 69. At all relevant times during the applicable limitations period, Plaintiff and the
14 other Class Members have been employees of Defendants and entitled to the benefits and
15 protections of California Labor Code § 226.

16 70. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
17 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized
18 statement showing:

19 (1) Gross wages earned,

20 (2) Total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of overtime under
22 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

23 (3) The number of piece rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis,

25 (4) All deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item,

27 (5) Net wages earned,

28 (6) The inclusive dates of the period for which the employee is paid,

 (7) The name of the employee and his or her social security number, except
that by January 1, 2008, only the last four digits of his or her social security number or an
employee identification number other than a social security number may be shown on the itemized



statement,

(8) The name and address of the legal entity that is the employer, and

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

71. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

72. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. 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.

73. "Promptly and easily determine," as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

74. As alleged herein, Defendants failed to provide Plaintiff and the other Class Members with all meal and rest periods in compliance with California law. They also failed to provide them with premium wages on workdays they failed to provide them with one or more



1 meal and/or rest periods in compliance with California law. Further, Defendants failed to
2 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
3 the wages earned and hours worked, described above, on the wage statements they issued to
4 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
5 the other Class Members' gross and net wages earned, total hours worked, hourly rate of pay, the
6 corresponding number of hours worked at each hourly rate, and other requirements of California
Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

7 75. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

11 76. As a result of being provided with inaccurate wage statements by Defendants,
12 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
13 wage statements were violated and they were misled about the amount of wages they had actually
14 earned and were owed. In addition, the absence of accurate information on their wage statements
15 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
16 and mathematical computations to determine the amounts of wages owed, has caused difficulty
17 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
18 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
19 and the other Class Members were not able to ascertain from the wage statements whether
Defendants complied with their obligations under California Labor Code § 226(a).

20 77. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
21 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
22 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
23 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
24 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
also entitled to an award of costs and reasonable attorneys' fees.

25 78. Accordingly, with respect to this cause of action, on behalf of herself and the other
26 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
27 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
28 proof.



FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

79. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

80. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

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

82. Labor Code § 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.

83. By failing to pay earned minimum and premium wages to Plaintiff and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

84. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

85. Labor Code § 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 § 201, or § 202.

86. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment.

87. Plaintiff is informed and believes that Defendants' failures to weekly and timely pay Plaintiff and the Class all of their earned and unpaid 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.

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1 88. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
2 herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
3 for each Class Member.

4 **SIXTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(Bus. & Prof. Code §§ 17200, et seq.)**

7 **(By Plaintiff and the Class against all Defendants)**

8 89. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

9 90. At all relevant times during the applicable limitations period, Plaintiff and the
10 other Class Members have been employees of Defendants and entitled to the benefits and
11 protections of the Business and Professions Code §§ 17200, et seq.

12 91. The unlawful conduct of Defendants alleged herein amounts to and constitutes
13 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
14 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
15 unfairly gained a competitive advantage over other comparable companies doing business in
16 California that comply with their legal obligations to, among other things, pay their employees
17 premium wages for workdays in which they did not provide employees with one or more meal
18 and rest periods, reimburse their employees for reasonable expenses incurred during the course
19 of performing their duties, and pay them all earned wages for all regular and overtime hours
20 worked.

21 92. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
22 other Class Members have suffered injuries in fact and lost money or property. Defendants
23 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
24 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
25 incurred during the course of performing their duties.

26 93. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
27 other Class Members are entitled to restitution of all monies rightfully belonging to them that
28 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
and unfair business practices.

 94. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
connection with their unfair competition claims pursuant to California Code of Civil Procedure

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§ 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHT CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

96. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning July 7, 2020 and ending on the date that final judgment is entered in this action.

97. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

98. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved

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1 Employees on such intervals for all wages earned and all hours worked.

2 99. During the applicable time period, Defendants violated California Labor Code §§
3 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

4 100. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
5 behalf of themselves and other current or former employees, to bring a civil action to recover
6 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

7 101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
8 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable
10 limitations period in the following amounts:

11 A. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
13 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
14 (penalty amounts established by California Labor Code § 210).

15 B. For violations of California Labor Code § 226(a), two hundred fifty
16 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
17 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
18 established by California Labor Code § 226.3).

19 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
20 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
21 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
22 established by California Labor Code § 558).

23 D. For violations of California Labor Code § 1197, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
25 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
26 pay period (regardless of whether the initial violations were intentionally committed) (penalty
27 amounts established by California Labor Code § 1197.1).

28 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
period for each subsequent violation (penalty amounts established by California Labor Code §



2699(f)(2)).

102. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated July 7, 2021, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the notice to the LWDA dated July 7, 2021 is attached as Exhibit A. Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate these allegations.

103. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;

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- 1 N. Costs of suit;
2 O. Interest;
3 P. Reasonable attorneys' fees; and
4 Q. Such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
7 on all issues so triable.

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10 Dated: September 10, 2021

11 By 

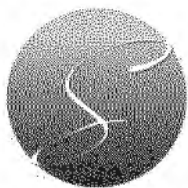
12 DAVID SPIVAK,
13 MARALLE MESSRELIAN,
14 MAYA CHEAITANI, Attorneys for Plaintiff,
15 REYNA JANETTE MUNOZ SANTOS, and all
16 others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

July 7, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Reyna Munoz / Akatete, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Reyna Janette Munoz Santos (hereafter "Munoz") provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to food preps, cooks, waiters and persons in similar positions (hereafter "Aggrieved Employees"), by Akatete, Inc., a California corporation (hereafter referred to as "Akatete"), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802.

At all relevant times, Akatete has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Munoz and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order") section 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

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Statement of Facts

In approximately April 2015, Akatete began to employ Munoz at its Bronco Billy's Pizza Palace restaurant located at 26775 Hayward Blvd, Hayward, California as an hourly cook. Akatete employed her continuously from that date until on or about July 9, 2020, when Akatete closed the restaurant due to the Covid-19 pandemic. Akatete reopened the restaurant one week later but declined to rehire Munoz.

At all relevant times, Akatete issued wages to Munoz and the other Aggrieved Employees on a semi-monthly basis and paid them at an hourly rate of pay. At all relevant times, Akatete classified Munoz and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

Akatete failed to compensate Munoz and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Munoz and the Aggrieved Employees often worked five (5) to six (6) days in a workweek, and between eight (8) to fourteen (14) hours per workday. At all relevant times, Munoz and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek. Akatete, however, failed to pay Munoz and the Aggrieved Employees overtime wages of at least one and a half 1½ times their hourly rates of pay for all hours in excess of forty (40) in a week, and all hours in excess of eight (8) in a day. Additionally, Akatete failed to pay Munoz and the Aggrieved Employees at least twice their hourly rates of pay when they worked over twelve (12) hours in a workday.

At all relevant times, Akatete required Munoz and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, Akatete often requested that Munoz and the Aggrieved Employees continue to work after they clocked-out because other employees did not arrive for their shifts on time. Akatete failed to compensate Munoz and the Aggrieved Employees for this work performed off-the-clock.

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At all relevant times, Akatete failed to provide Munoz and the Aggrieved Employees with all timely meal periods. Due to the workload and failure to hire sufficient staff members, Akatete denied Munoz and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Akatete also denied 30-minute off-duty meal periods to Munoz and the Aggrieved Employees because Akatete only allowed Munoz and the Aggrieved Employees to take a 20-minute break once a day. Akatete required Munoz and the Aggrieved Employees to manually log-in their hours worked on a handwritten time-sheet at the end of their shifts. Akatete instructed Munoz and the Aggrieved Employees to only indicate their clock-in and clock-out times without entering their meal periods.

Moreover, Akatete failed to authorize and permit Munoz and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, Akatete failed to authorize and permit Munoz and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Akatete did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement.

Akatete failed to hire sufficient staff members to cover and support Munoz and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Furthermore, Akatete failed to pay premium wages for days on which it failed to provide Munoz and the other Aggrieved Employees with timely meal periods. Akatete also failed to pay premium wages for days on which it failed to provide Munoz and the other Aggrieved Employees with timely rest periods.

At all relevant times, Akatete required Munoz and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. On several occasions, Akatete required Munoz and the Aggrieved Employees to drive to the Akatete restaurant in Fremont to pick up items that the Hayward location ran out of. Munoz and the Aggrieved Employees picked-up products such as bread and cheese, among others. On several occasions, Akatete also required Munoz and the Aggrieved Employees to drive to the grocery store to

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buy vegetables, condiments and containers for the restaurant. Akatete did not reimburse Munoz and the Aggrieved Employees for such mileage expenses.

Akatete failed to issue to Munoz and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. Akatete also failed to timely pay Munoz and the Aggrieved Employees all earned wages described above during and at the conclusion of employment. Moreover, Akatete failed to maintain accurate employee records of Munoz and the Aggrieved Employees.

For the reasons stated herein, Munoz alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the other Aggrieved Employees:

- (a) Akatete failed to pay Munoz and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;
- (b) Akatete failed to provide Munoz and the Aggrieved Employees all meal periods and rest periods in compliance with California law;
- (c) Akatete failed to compensate Munoz and the Aggrieved Employees at one hour's pay for each day in which Akatete failed to provide them with their rest breaks as required by law;
- (d) Akatete failed to compensate Munoz and the Aggrieved at one hour's pay for each day in which it failed to provide them with their meal periods as required by law;
- (e) Akatete failed to indemnify Munoz and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) Akatete failed to provide Munoz and the other Aggrieved Employees with accurate wage statements; and

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- (g) Akatete failed to timely pay Munoz and the other Aggrieved Employees all earned and unpaid wages during their employment with Akatete.

Accordingly, Munoz now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Akatete's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, Akatete operated restaurants. Accordingly, Munoz and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(K) of the Wage Order states,

"Hours worked" means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled

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to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in

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excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Akatete failed to compensate Munoz and the Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay, including overtime wages for all hours in excess of (40) in a week, all hours in excess of eight (8) in a day, and double their hourly rates of pay for all hours worked in excess of twelve (12) hours in a workday. Akatete also failed to compensate Munoz and the Aggrieved Employees for all off-the-clock hours they worked at the correct rates of pay.

Accordingly, Munoz now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

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2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

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- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, Akatete failed to provide Munoz and the Aggrieved Employees with all timely rest and meal periods. Due to the workload and failure to hire sufficient staff members, Akatete denied Munoz and the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Akatete also denied 30-minute off-duty meal periods to Munoz and the Aggrieved Employees because Akatete only allowed Munoz and the Aggrieved Employees to take a 20-minute break once per day. Furthermore, Akatete failed to pay premium wages for days on which it failed to provide Munoz and the other Aggrieved Employees with timely meal periods.

Accordingly, Munoz now seeks civil penalties for these Labor Code violations that Akatete has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));

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2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code section 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less

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than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Due to high workload and low staffing levels, Akatete failed to authorize and permit Munoz and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Akatete did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Moreover, Akatete failed to pay Munoz and the Aggrieved Employees premium wages on workdays it

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failed to provide them with 10-minute rest periods every four hours worked or major fraction thereof.

Accordingly, Munoz now seeks civil penalties for these Labor Code violations that Akatete has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Akatete required Munoz and the Aggrieved Employees to drive to the Akatete restaurant in Fremont to pick up items that the Hayward location ran out of. Munoz and the Aggrieved Employees picked-up products such as bread and cheese, among others. On several occasions, Akatete also required Munoz and the Aggrieved Employees to drive to the grocery store to buy vegetables, condiments and containers for the restaurant. Akatete did not reimburse Munoz and the Aggrieved Employees for such mileage. Accordingly, Munoz seeks civil penalties for these Labor Code violations that Akatete has committed against her and the Aggrieved Employees as follows:

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1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other

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than a social security number may be shown on the itemized statement;

8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, Akatete violated California Labor Code section 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Akatete failed to state in the wage statements it issued to Munoz and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above).

Accordingly, Munoz seeks civil penalties for the Labor Code violations that Akatete has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

Failure to Timely Pay Wages **(Lab. Code § 204)**

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

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In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Akatete failed to pay Munoz and the other Aggrieved Employees for all earned minimum wages and work performed after they clocked-out. Akatete failed to provide Munoz and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Akatete also failed to provide Munoz and the Aggrieved Employees with all premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Akatete failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Munoz now seeks civil penalties for the Labor Code violations that Akatete has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Akatete failed to pay Munoz and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Munoz. By failing to pay Munoz and the Aggrieved Employees as set forth above by such time, Akatete is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Munoz seeks civil penalties from Akatete as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

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Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.

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- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Akatete failed to pay Munoz and the other Aggrieved Employees for all earned minimum wages and for work performed after they clocked-out. Akatete failed to provide Munoz and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Akatete also failed to provide Munoz and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Akatete did not record the hours worked off the clock. As a result, Akatete has failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Munoz and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Munoz seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

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1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Reyna Munoz

Akatete, Inc.

c/o Marlene Teehan

Agent for Service of Process

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Elizabeth Contreras