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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12

13 SHANTIEL MUELLER and MARC
GATICA, as aggrieved employees pursuant
14 to the Private Attorneys General Act
("PAGA"), on behalf of the State of
15 California and other aggrieved employees,

16 Plaintiffs,

17 vs.

18 URBAN PLATES, LLC, a Delaware
limited liability company; URBAN
19 PLATES-DEL MAR, LLC, a California
limited liability company; and DOES 1
20 through 10, inclusive,

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/03/2022 at 08:52:00 AM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

Case No.: 37-2021-00043555-CU-OE-CTL

Honorable Richard S. Whitney, Dept. C-68

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiffs Shantiel Mueller and Marc Gatica, as aggrieved employees and on behalf of
2 the State of California and all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

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

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

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

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

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

THE PARTIES

6. Plaintiff Shantiel Mueller is a resident of Salem, Virginia. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately November 2019 to June 2020. Plaintiff Mueller worked for Defendants in a line service position at their restaurant located in Carlsbad, California. During her employment, Plaintiff Mueller typically worked eight (8) to nine (9) hours per day, three (3) to five (5) days per week, in the afternoons and evenings. At the time Plaintiff Mueller's employment with Defendants ended, she earned approximately \$13.00 per hour. Her job duties included, without limitation, restocking the salad bar, plating food items, reviewing and preparing customer orders, greeting customers, cleaning tables and work stations, mopping the floors, taking out trash, and providing customer service

7. Plaintiff Marc Gatica is a resident of Placentia, in Orange County, California. Defendants employed Plaintiff Gatica as an hourly paid, non-exempt Sous Chef from approximately March 2016 to March 2021. Plaintiff Gatica worked for Defendants at their restaurants in Brea and Aliso Viejo, California. During his employment, Plaintiff Gatica typically worked ten (10) to twelve (12) hours per day, five (5) days per week, usually working the closing shift. At the time Plaintiff Gatica's employment with Defendants ended, he earned approximately \$18.90 per hour. His job duties included, without limitation, preparing orders, catering, and managing the kitchen.

1 8. On information and belief, Defendants required some employees, including
2 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of their
3 hire or during their employment. On further information and belief, Defendants' dispute
4 resolution policy and/or arbitration agreement was and is both procedurally and substantively
5 unconscionable. Specifically, Defendants presented new hires with a Mutual Arbitration
6 Agreement ("Arbitration Agreement") during the onboarding process, which had to be reviewed
7 and acknowledged immediately. In fact, upon information and belief, the Arbitration
8 Agreement was one of several documents presented to new employees for signature during the
9 orientation process, including a Confidentiality & Non-Disclosure Agreement, Employment of
10 Relatives & Team Member Fraternization Policy, Position Description, Meal Period Waiver,
11 and Workers' Compensation Medical Provider Network disclosure, among other documents.
12 Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration
13 Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or
14 leave-it basis at the time they were hired, along with other on-boarding documents. Further,
15 Defendants did not set forth in the agreement or otherwise provide employees with the rules
16 which will govern the arbitration, instead forcing employees to seek this information out on
17 their own.

18 9. URBAN PLATES, LLC was and is, upon information and belief, a Delaware
19 limited liability company, and at all times hereinafter mentioned, an employer whose employees
20 are engaged throughout this county and the State of California.

21 10. URBAN PLATES-DEL MAR, LLC was and is, upon information and belief, a
22 California limited liability company, and at all times hereinafter mentioned, an employer whose
23 employees are engaged throughout this county and the State of California.

24 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
25 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
26 the complaint and serve such fictitiously named Defendants once their names and capacities
27 become known.

28 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10

1 were the partners, agents, owners, or managers of URBAN PLATES, LLC and URBAN
2 PLATES-DEL MAR, LLC at all relevant times.

3 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, URBAN PLATES,
5 LLC; URBAN PLATES-DEL MAR, LLC; and/or DOES 1 through 10 (collectively,
6 “Defendants” or “URBAN PLATES”), each acting as the agent, employee, alter ego, and/or
7 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
8 within the course and scope of such agency, employment, joint venture, or concerted activity
9 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
10 accordance with, and represent, the official policy of Defendants.

11 14. At all relevant times, Defendants, and each of them, ratified each and every act
12 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
13 and abetted the acts and omissions of each and all the other Defendants in proximately causing
14 the damages herein alleged.

15 15. Plaintiffs are informed and believe, and thereon allege, that each of said
16 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
17 omissions, occurrences, and transactions alleged herein.

18 16. Under California law, Defendants are jointly and severally liable as employers
19 for the violations alleged herein because they have each exercised sufficient control over the
20 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
21 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
22 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
23 conditions of employment, determined their rate of pay, and maintained their employment
24 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved Employees
25 to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so as to create a
26 common-law employment relationship. As joint employers of Plaintiffs and other non-party
27 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
28 available to Plaintiffs and other non-party Aggrieved Employees under the law.

1 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and other
3 non-party Aggrieved Employees because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by
5 Plaintiffs and other non-party Aggrieved Employees;
6 (b) jointly exercised meaningful control over Plaintiffs' and other non-party
7 Aggrieved Employees' wages, hours, and working conditions, including
8 the quantity, quality standards, speed, scheduling, and operative details
9 of the tasks performed by Plaintiffs and other non-party Aggrieved
10 Employees;
11 (c) jointly required that Plaintiffs and other non-party Aggrieved Employees
12 perform work which is an integral part of Defendants' businesses; and
13 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved
14 Employees as a matter of economic reality in that Plaintiffs and other
15 non-party Aggrieved Employees were dependent on Defendants, who
16 shared the power to set the wages of Plaintiffs and other non-party
17 Aggrieved Employees and determined their working conditions, and who
18 jointly reaped the benefits from the underpayment of their wages and
19 noncompliance with other statutory provisions governing their
20 employment.

21 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
22 there has existed a unity of interest and ownership between Defendants such that any
23 individuality and separateness between the entities has ceased.

24 19. URBAN PLATES, LLC; URBAN PLATES-DEL MAR, LLC; and DOES 1
25 through 10 are therefore alter egos of each other.

26 20. Adherence to the fiction of the separate existence of Defendants would permit an
27 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
28 liability for the wrongful acts committed by them under the name URBAN PLATES.

1 21. Plaintiffs further allege, upon information and belief, that Defendants URBAN
2 PLATES, LLC and URBAN PLATES-DEL MAR, LLC are alter egos of each other for the
3 following reasons:

4 (a) On the California Secretary of State's website
5 (<https://businesssearch.sos.ca.gov/>), URBAN PLATES, LLC and
6 URBAN PLATES-DEL MAR, LLC share the same entity address and
7 mailing address, "420 Stevens, Suite 150, Solana Beach, CA 92075";

8 (b) According to the most recent "Statement of Information" forms filed with
9 the California Secretary of State, URBAN PLATES, LLC and URBAN
10 PLATES-DEL MAR, LLC share the same officers and/or managers,
11 including, but not limited to, Saad Nadhir, who serves as Chief Executive
12 Officer of URBAN PLATES, LLC and as a manager of URBAN
13 PLATES-DEL MAR, LLC;

14 (c) On information and belief, URBAN PLATES, LLC and URBAN
15 PLATES-DEL MAR, LLC share the agent for service of process,
16 CORPORATION SERVICE COMPANY WHICH WILL DO
17 BUSINESS IN CALIFORNIA AS CSC - LAWYERS
18 INCORPORATING SERVICE (C1592199); and

19 (d) On information and belief, URBAN PLATES, LLC and URBAN
20 PLATES-DEL MAR, LLC utilize the same standardized employment
21 forms and issue the same employment policies.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 22. Defendants own and operate approximately eighteen (18) fast-casual restaurant
24 locations in California. Defendants market their restaurants as serving nutritious made-from-
25 scratch meals using sustainably sourced ingredients at affordable prices. As of 2020,
26 Defendants employed approximately 900 employees nationwide, the majority of which are
27 employed within California. Upon information and belief, Defendants maintain a single,
28 centralized Human Resources (HR) department at their corporate headquarters in Solana Beach,

1 California, for all non-exempt, hourly paid employees working for Defendants in California,
2 including Plaintiffs and other non-party Aggrieved Employees; the HR department is
3 responsible for the recruiting and hiring of new employees, and communicating and
4 implementing Defendants' company-wide policies, including timekeeping policies and meal
5 and rest period policies, to employees throughout California.

6 23. In particular, Plaintiffs and other non-party Aggrieved Employees, on
7 information and belief, received the same standardized documents and/or written policies.
8 Upon information and belief, the usage of standardized documents and/or written policies,
9 including new-hire documents, indicate that Defendants dictated policies at the corporate level
10 and implemented them company-wide, regardless of their employees' assigned locations or
11 positions. Upon information and belief, Defendants set forth uniform policies and procedures
12 in several documents provided at an employee's time of hire. Upon information and belief,
13 Defendants maintain a centralized Payroll department at their corporate headquarters in Solana
14 Beach, California, which processes payroll for all non-exempt, hourly paid employees working
15 for Defendants at their various locations and jobsites in California, including Plaintiffs and other
16 non-party Aggrieved Employees. Based upon information and belief, Defendants issue the
17 same formatted wage statements to all non-exempt, hourly paid employees in California,
18 irrespective of their work locations. Upon information and belief, Defendants process payroll
19 for departing employees in the same manner throughout the State of California, regardless of
20 the manner in which each employee's employment ends.

21 24. Defendants continue to employ non-exempt or hourly paid employees in
22 California.

23 25. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers and other professionals, employees,
25 and advisors knowledgeable about California labor and wage law, employment and personnel
26 practices, and about the requirements of California law.

27 26. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
28 non-party Aggrieved Employees were not paid for all hours worked because all hours worked

1 were not recorded.

2 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 receive certain wages for overtime compensation and that they were not receiving certain wages
5 for overtime compensation.

6 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that other non-party Aggrieved Employees were entitled to be paid at a
8 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
9 all remuneration required by law, including but not limited to, all income derived from incentive
10 pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all
11 forms of remuneration in calculating the regular rate of pay for other non-party Aggrieved
12 Employees.

13 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
15 receive at least minimum wages for compensation and that they were not receiving at least
16 minimum wages for work that was required to be done off-the-clock. In violation of the
17 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
18 least minimum wages for work done off-the-clock.

19 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 meal periods in accordance with California the Labor Code and applicable IWC Wage Order or
22 payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and other
24 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
25 additional hour of pay at their regular rates of pay when they did not receive a timely,
26 uninterrupted, thirty (30) minute meal period.

27 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to

1 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
2 payment of one (1) additional hour of pay at their regular rates of pay when they were not
3 authorized and permitted to take a compliant rest period. In violation of the California Labor
4 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
5 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
6 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
7 pay when they were not authorized and permitted to take a compliant rest period.

8 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
10 receive complete and accurate wage statements in accordance with California law. In violation
11 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
12 provided complete and accurate wage statements.

13 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that they had a duty to maintain accurate and complete payroll records in
15 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
16 knowingly, and intentionally failed to do so.

17 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
19 timely payment of wages during their employment. In violation of the California Labor Code,
20 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
21 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
22 and/or reporting time pay, within permissible time periods.

23 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 timely payment of all wages earned upon termination of employment. In violation of the
26 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
27 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
28 and rest period premiums, and/or reporting time pay, within permissible time periods.

1 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that other non-party Aggrieved Employees were entitled to be paid reporting
3 time pay when they reported to work for their scheduled shift but were put to work for less than
4 half of the regular schedule. In violation of the California Labor Code and applicable IWC
5 Wage Order, Defendants did not pay other non-party Aggrieved Employees all reporting time
6 pay due.

7 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
9 suitable resting facilities that employees may use to cease work and recover during meal or rest
10 periods. In violation of the California Labor Code and applicable IWC Wage Order, Defendants
11 failed to provide Plaintiffs and other non-party Aggrieved Employees suitable resting facilities.

12 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 suitable seating and/or have seats nearby to use during a lull in tasks that do require moving
15 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
16 Defendants failed to provide Plaintiffs and and other non-party Aggrieved Employees suitable
17 seating.

18 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 receive reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive reimbursement of applicable
22 business-related expenses and costs incurred.

23 40. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew or should have known that Defendants had a duty to provide
25 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
26 of their employment with Defendants as required by the California Wage Theft Prevention Act,
27 but failed to do so.

28 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

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

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

44. Plaintiffs and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

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

(a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

1 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
2 employer and the aggrieved employee by certified mail that it does not
3 intend to investigate the alleged violation within sixty (60) calendar days
4 of the postmark date of the Employee’s Notice. Upon receipt of the
5 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
6 (65) calendar days of the postmark date of the Employee’s Notice, the
7 aggrieved employee may commence a civil action pursuant to California
8 Labor Code section 2699 to recover civil penalties in addition to any other
9 penalties to which the employee may be entitled.

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

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

18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be accompanied
20 by a filing fee of seventy-five dollars (\$75).

21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice. The employer shall give
23 written notice by certified mail within that period of time to the aggrieved
24 employee or representative and the agency if the alleged violation is
25 cured, including a description of actions taken, and no civil action
26 pursuant to Section 2699 may commence. If the alleged violation is not
27 cured within the 33-day period, the employee may commence a civil
28 action pursuant to Section 2699.

1 47. On February 4, 2021, Plaintiff Mueller provided written notice by online filing
2 to the LWDA and by certified mail to Defendants of the specific provisions of the California
3 Labor Code alleged to have been violated, including facts and theories to support the alleged
4 violations, in accordance with California Labor Code section 2699.3. Plaintiff Mueller’s written
5 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
6 PAGA Administrator has confirmed receipt of Plaintiff Mueller’s written notice and assigned
7 Plaintiff Mueller PAGA Case Number LWDA-CM-820700-21. A true and correct copy of
8 Plaintiff Mueller’s written notice to the LWDA and Defendants dated February 4, 2021, is
9 attached hereto as “Exhibit 1.”

10 48. On September 21, 2021, Plaintiff Gatica provided written notice by online filing
11 to the LWDA and by certified mail to Defendants of the specific provisions of the California
12 Labor Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff Gatica’s written
14 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
15 PAGA Administrator has confirmed receipt of Plaintiff Gatica’s written notice and assigned
16 Plaintiff Gatica PAGA Case Number LWDA-CM-845361-21. A true and correct copy of
17 Plaintiff Gatica’s written notice to the LWDA and Defendants dated September 21, 2021, is
18 attached hereto as “Exhibit 2.”

19 49. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
20 sent their initial written notices described above, and the LWDA has not responded that it
21 intends to investigate Plaintiffs’ claims, and Defendants have not cured the violations.

22 50. Thus, Plaintiffs have satisfied the administrative prerequisites under California
23 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
25 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

26 51. Labor Code section 558(a) provides “[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
3 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
5 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.” Plaintiffs, acting in the public interest as a private attorneys
7 general, seek assessment and collection of civil penalties under Labor Code section 558 for
8 themselves, all other non-party Aggrieved Employees, and the State of California against
9 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
10 IWC Wage Order. Plaintiffs, acting in the public interest as private attorneys general, do not
11 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
12 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

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

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

19 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private
21 attorneys general, seek assessment and collection of civil penalties for themselves, all other
22 non-party Aggrieved Employees, and the State of California against Defendants for violations
23 of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
24 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

25 **FIRST CAUSE OF ACTION**

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

27 **(Against all Defendants)**

28 55. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and

every allegation set forth above.

56. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiffs and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to authorize and permit Plaintiffs and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage

statements to Plaintiffs and other non-party Aggrieved Employees, as set forth below;

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

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

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

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

(j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable resting facilities to Plaintiffs and other non-party Aggrieved Employees, as set forth below;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below;

(l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and

(m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiffs' and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

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1 **FAILURE TO PAY OVERTIME**

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

3 58. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

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

12 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

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

22 62. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
25 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
26 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
27 the seventh (7th) day of work.

28 63. Defendants willfully failed to pay all overtime wages owed to Plaintiffs and other

1 non-party Aggrieved Employees. During the relevant time period, Plaintiffs and other non-party
2 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess
3 of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
4 hours in a week, because all hours that they worked were not recorded.

5 64. First, during the relevant period, upon information and belief, Defendants had,
6 and continue to have, a company-wide policy of discouraging and impeding Plaintiffs and other
7 non-party Aggrieved Employees from recording hours worked that were outside of their
8 scheduled shifts to limit the amount of overtime employees could accrue. Defendants expected
9 employees to clock out at their exact scheduled shift end time, but also expected employees to
10 continue performing their closing tasks off-the-clock if they were not complete. Thus, Plaintiffs
11 and other non-party Aggrieved Employees were forced to work off-the-clock performing tasks
12 outside of their scheduled shift times, but were not permitted to remain clocked in to record this
13 time worked. For example, Defendants pressured Plaintiffs to clock out at the end of their
14 scheduled shifts when the restaurant was closing, but then continue to perform closing duties
15 off-the-clock. As a result, Plaintiff Mueller would clock out and then at times spend 20–30
16 minutes sweeping and mopping floors, taking out the trash, and performing other closing tasks.
17 Plaintiff Gatica would clock out and then at times spend approximately 30 minutes handling calls
18 from customers, assisting other employees in the kitchen, or dropping off food for customers who
19 had received incorrect orders. Other non-party Aggrieved Employees similarly were required by
20 Defendants to clock out at their designated shift end times but continue to perform closing tasks
21 off-the-clock. As another example, Defendants often instructed Plaintiff Gatica to pick up
22 restaurant ingredients on the way to work, which would take approximately thirty (30) minutes,
23 but did not permit him to record this time worked. Furthermore, Plaintiff Gatica and other
24 non-party Aggrieved Employees had to complete “Huddle” training once per month off the clock,
25 which would take thirty (30) minutes to two (2) hours. At all times, Plaintiffs and other non-party
26 Aggrieved Employees remained under the control of Defendants. This off-the-clock work could
27 have been recorded by Defendants, but they refused to do so to avoid payment of additional
28 wages to Plaintiffs and other non-party Aggrieved Employees.

1 65. Second, on information and belief, Defendants had, and continue to have, a
2 company-wide policy of strictly staffing their restaurant locations based on the labor hours
3 allocated by each restaurant's labor or payroll budget, which has resulted in, and continues to
4 result in, chronic understaffing and a lack of adequate meal period coverage, because there were
5 too few employees on duty to handle the workload and attend to customers. As a result of this
6 inadequate meal period coverage, Plaintiff Gatica and other non-party Aggrieved Employees
7 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
8 entitled to receive a meal period.

9 66. Third, Defendants also had a practice of failing to schedule meal periods, which
10 further caused Plaintiffs and other non-party Aggrieved Employees to not be relieved of their
11 duties for compliant meal periods. Consequently, Plaintiffs and other non-party Aggrieved
12 Employees performed work during meal periods for which they were not paid.

13 67. Moreover, Defendants' company-wide timekeeping system further prevented
14 Plaintiffs and other non-party Aggrieved Employees from recording all hours worked when
15 their meal periods were shortened or interrupted, because the system locked Plaintiffs and other
16 non-party Aggrieved Employees out once they clocked out for a meal period, and would not
17 permit them to clock back in from a meal before 30 minutes elapsed. Thus, Defendants'
18 timekeeping system further prevented Plaintiffs and other non-party Aggrieved Employees from
19 recording all hours worked when their meal periods were shortened or interrupted. Furthermore,
20 because Defendants frowned upon employees accruing meal period penalties, Defendants
21 pressured Plaintiff Gatica and other non-party Aggrieved Employees to clock out for meal
22 periods and/or adjusted employee time records to reflect compliant meal periods, regardless of
23 whether they had received a compliant meal period, in order to strictly limit meal penalties that
24 Defendants would otherwise owe. For example, Defendants' management instructed Plaintiff
25 Gatica to clock out and record compliant meal periods even though he frequently worked
26 through his first and second meal periods due to his heavy workload.

27 68. Fourth, Defendants' policies and/or practices of understaffing their locations and
28 strict limitations on overtime accrual also led to Plaintiff Gatica and other non-party Aggrieved

1 Employees performing work off-the-clock, on their days off and outside of their scheduled
2 shifts. For example, Plaintiff Gatica was required to respond to work-related calls and text
3 messages from Defendants' management and employees on his days off or outside of his
4 scheduled shifts about work-related issues, such as questions about Yelp reviews or late
5 ingredient deliveries (which would cause Plaintiff Gatica to perform follow-up calls with
6 suppliers). Plaintiff Gatica estimates he spent approximately 5-20 minutes on each of his days
7 off responding to work-related calls and text messages to his personal cellular phone.
8 Additionally, Plaintiff Gatica and other non-party Aggrieved Employees were required to
9 occasionally cover shifts at other restaurant locations and attend mandatory training sessions
10 and meetings, but were not compensated for their travel time. Furthermore, Plaintiff Gatica and
11 other non-party Aggrieved Employees were required to monitor Defendants' online scheduling
12 app during their personal time to keep abreast of when they would be scheduled to work. Again,
13 this off-the-clock work could have been recorded by Defendants, but they refused to do so to
14 avoid payment of additional wages to Plaintiff Gatica and other non-party Aggrieved
15 Employees.

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

24 70. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
25 correct overtime rate for the recorded overtime hours that they generated. In addition to an
26 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
27 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
28 California Labor Code, Defendants failed to incorporate all compensation, including incentive

1 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
2 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
3 when other non-party Aggrieved Employees worked overtime and received these other forms
4 of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
5 required.

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

11 **FAILURE TO PAY MINIMUM WAGES**

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

13 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
15 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
16 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
17 an employee is subject to the control of an employer, and includes all the time the employee is
18 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
19 § 11050(2)(K) (defining "Hours Worked").

20 73. As set forth above, due to Defendants' restrictions on overtime accrual,
21 Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved Employees for
22 actual hours worked before and/or after scheduled shifts, because these hours were not
23 accurately recorded. In addition, as stated, Plaintiffs and other non-party Aggrieved Employees
24 were required to perform work off-the-clock, such as sweeping and mopping the floors, taking
25 out the trash, handling calls from customers, assisting other employees in the kitchen, dropping
26 off food for customers who had received incorrect orders, answering calls and text messages
27 from management on their days off, completing "Huddle" training, monitoring the online
28 scheduling app, and/or picking up ingredients on their way to work.

1 74. Further, as also stated above, due to Defendants' uniform practice of utilizing
2 labor budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and
3 lack of meal period coverage, Plaintiffs and other non-party Aggrieved Employees were
4 impeded from taking all uninterrupted meal periods to which they were entitled and were
5 required to work off-the-clock. This was exacerbated by Defendants' timekeeping system that
6 automatically locked Plaintiff Gatica and other non-party Aggrieved Employees out for meal
7 periods for a full 30 minutes, further preventing them from recording hours worked when their
8 meal periods were cut short and/or interrupted. Additionally, to limit the meal penalties that
9 Defendants would otherwise owe, Defendants pressured Plaintiff Gatica and other non-party
10 Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to
11 reflect compliant meal periods, but required them to continue working, time for which they were
12 not paid.

13 75. Moreover, Defendants required Plaintiffs and other non-party Aggrieved
14 Employees spend time off-the-clock laundering their uniforms, which would become heavily
15 soiled from work, but did not compensate them for this time. Specifically, Defendants, on a
16 company-wide basis, expected Plaintiffs and other non-party Aggrieved Employees to report to
17 work in clean and presentable uniforms, including, but not limited to, chef's hats and shirts
18 bearing Defendants' company logo. However, Defendants did not provide its employees with
19 sufficient uniforms to wear for their shifts throughout the week. Defendants only provided
20 Plaintiff Mueller with one (1) chef's hat and one (1) company shirt during her entire
21 employment, and denied Plaintiff Mueller's request for additional uniform items to wear during
22 the workweek. Defendants only provided Plaintiff Gatica with three (3) company shirts during
23 his entire employment. Because Defendants did not provide Plaintiffs and other non-party
24 Aggrieved Employees with an adequate number of uniform items, Plaintiffs and other non-party
25 Aggrieved Employees were forced to wash their uniforms more frequently than they would
26 otherwise do laundry, and incur expenses for doing so. Due to the nature of restaurant work,
27 Plaintiffs' and other non-party Aggrieved Employees' uniforms would become stained, sweaty,
28 soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in

1 with other laundry. As a result, they had to wash their uniform items separately from their other
2 clothing, and/or more frequently than other items, thus spending time outside of work to
3 maintain the upkeep of their uniforms. Defendants failed to compensate Plaintiffs and other
4 non-party Aggrieved Employees for this time.

5 76. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs
6 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
7 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
8 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
9 1197, and 1198.

10 77. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
11 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
12 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
13 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
15 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

16 78. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
18 other non-party Aggrieved Employees' employment by Defendants.

19 79. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is not
23 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
24 and the employee. Under California law, first meal periods must start after no more than five
25 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 80. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 81. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
2 1198, and the applicable IWC Wage Order also require employers to provide a second meal
3 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
4 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
5 the total hours worked is no more than twelve (12) hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal period was not
7 waived.

8 82. As set forth above, during the relevant time period, Defendants had, and continue
9 to have, company-wide policies and/or practices of utilizing labor budgets, understaffing their
10 locations, and assigning heavy workloads, which resulted in a lack of meal period coverage and
11 prevented Plaintiffs and other non-party Aggrieved Employees from taking compliant meal
12 periods to which they were entitled. In conjunction with understaffing, Defendants had a
13 company-wide practice or policy of failing to schedule meal periods for employees, which
14 exacerbated the lack of meal period coverage. As a result, Plaintiffs and other non-party
15 Aggrieved Employees had to work through part or all of their meal periods, had their meal
16 periods interrupted, and/or had to wait extended periods of time before taking meal periods. For
17 example, during Plaintiff Mueller's employment, Defendants did not provide Plaintiff Mueller
18 with meal periods within the first five (5) hours of her shift. At times, Plaintiff Mueller was
19 required to continue working six (6) or more hours into her shift before she was released by
20 Defendants to take a meal period.

21 83. Moreover, as described above, Defendants implemented an electronic
22 timekeeping system that locked out Plaintiff Gatica and other non-party Aggrieved Employees
23 and prevented them from clocking in early before the end of their 30-minute meal period. As a
24 result of Defendants' timekeeping system, Plaintiff Gatica and other non-party Aggrieved
25 Employees were prevented from accurately recording when they had to return early from a meal
26 period so that they could be compensated for that time worked.

27 84. Furthermore, as stated, because Defendants frowned upon employees accruing
28 meal period penalties, Defendants' management pressured Plaintiff Gatica other non-party

1 Aggrieved Employees to clock out for meal periods and/or adjusted their time records to reflect
2 compliant meal periods, regardless of whether they had received a compliant meal period, in
3 order to strictly limit meal penalties that Defendants would otherwise owe.

4 85. In addition, Defendants did not provide Plaintiff Gatica and other non-party
5 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
6 of ten (10) hours in one day. During the relevant time period, Plaintiff Gatica and other
7 non-party Aggrieved Employees worked shifts in excess of ten (10) hours without receiving an
8 uninterrupted second 30-minute meal period. Plaintiffs and other non-party Aggrieved
9 Employees did not sign valid meal period waivers on days that they were entitled to meal
10 periods and were not relieved of all duties.

11 86. Defendants knew or should have known that as a result of their company-wide
12 policies, Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all
13 duties to take timely, uninterrupted meal periods. Defendants further knew or should have
14 known that they did not pay Plaintiffs and other non-party Aggrieved Employees meal period
15 premiums when meal periods were missed, late, short, and/or interrupted.

16 87. Defendants also have engaged in a company-wide practice and/or policy of not
17 paying all meal period premiums owed when compliant meal periods are not provided. Because
18 of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not
19 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
20 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
21 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
22 other non-party Aggrieved Employees' regular rates of pay by including all remunerations, such
23 as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations
24 were also paid at an incorrect rate and resulted in an underpayment of meal period premiums.

25 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
26 Employees compliant meal periods and failed to pay the full meal period premiums due.
27 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
28 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are

1 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
2 (f), and (g).

3 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

4 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

5 89. At all relevant times herein set forth, the applicable IWC Wage Order and
6 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other
7 non-party Aggrieved Employees' employment by Defendants.

8 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3 ½) hours.

14 91. At all relevant times, California Labor Code section 226.7 provides that no
15 employer shall require an employee to work during any rest period mandated by an applicable
16 order of the California IWC. To comply with its obligation to authorize and permit rest periods
17 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
18 must "relinquish any control over how employees spend their break time and relieve their
19 employees of all duties—including the obligation that an employee remain on call. A rest
20 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
21 257, 269-270 (2016).

22 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
23 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
24 Defendants one (1) additional hour of pay at their regular rates of pay for each work-day that a
25 required rest period was not authorized and permitted.

26 93. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period
28 per each four (4) hour period worked or major fraction thereof. As with meal periods,

1 Defendants' company-wide labor budget policies and resultant understaffing, heavy workload,
2 and lack of rest period coverage prevented Plaintiffs and other non-party Aggrieved Employees
3 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
4 to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period
5 coverage, further led to Plaintiffs and other non-party Aggrieved Employees not being
6 authorized and permitted to take rest periods.

7 94. Furthermore, upon information and belief, Defendants maintained and
8 implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs
9 and other non-party Aggrieved Employees remain on Defendants' premises during their rest
10 periods. Because Plaintiffs and other non-party Aggrieved Employees were restricted from
11 leaving the Defendants' premises during rest periods, they were denied the ability to use their
12 rest periods freely for their own purposes, such as running personal errands. Thus, Defendants
13 effectively maintained control over Plaintiffs and other non-party Aggrieved Employees during
14 rest periods, and, as a result of this rest period policy, Defendants did not relinquish control over
15 Plaintiffs and other non-party Aggrieved Employees during rest periods.

16 95. As a result of Defendants' practices and policies, Plaintiffs and other non-party
17 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
18 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
19 periods to which they were entitled. For example, Plaintiff Mueller frequently worked through
20 her shifts without taking her 10-minute rest periods 2-3 times per week due to Defendants'
21 unmanageable workload, lack of rest period coverage, and failure to schedule rest periods for
22 employees. Plaintiff Mueller also had her rest periods interrupted or cut short twice per week
23 by Defendants' managers who would instruct her to return to work when the restaurant became
24 busy with customers. Plaintiff Gatica also frequently worked through his shifts without taking
25 his 10-minute rest period due to Defendants' unmanageable workload, lack of rest period
26 coverage, and failure to schedule rest periods for employees.

27 96. Additionally, because Defendants sought to avoid rest period penalties,
28 Defendants' management pressured Plaintiff Gatica and other non-party Aggrieved Employees

1 to falsely acknowledge receiving compliant rest periods.

2 97. Defendants have also engaged in a company-wide policy and/or practice of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods. Alternatively, to the
6 extent that Defendants did pay rest period premiums to other non-party Aggrieved Employees,
7 Defendants did so at the incorrect rates. Because Defendants did not properly calculate other
8 non-party Aggrieved Employees' regular rates of pay by including all forms of compensation,
9 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any
10 premiums paid for rest period violations were also paid at an incorrect rate and resulted in an
11 underpayment of rest period premiums.

12 98. Defendants' conduct violates the applicable IWC Wage Order and California
13 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
14 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

17 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

23 100. During the relevant time period, Defendants have knowingly and intentionally
24 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
25 inaccurate wage statements. For example, Defendants issued uniform wage statements to
26 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
27 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
28 the pay period, including rates of pay for overtime wages and/or meal and rest period premiums,

1 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
2 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

28 104. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
2 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
3 of any employees for longer hours than those fixed by the order or under conditions of labor
4 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
5 are required to keep accurate time records showing when the employee begins and ends each
6 work period and meal period. During the relevant time period, Defendants failed, on a
7 company-wide basis, to keep accurate records of work period and meal period start and stop
8 times for Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198.
9 Also, as stated, Defendants engaged in a company-wide practice and/or policy of falsifying
10 Plaintiff Gatica’s and other non-party Aggrieved Employees’ time records by recording that
11 compliant meal periods were taken regardless of if or when meal periods were actually taken,
12 and thereby failed to keep accurate records of meal start and end times for Plaintiff Gatica and
13 other non-party Aggrieved Employees. Furthermore, in light of Defendants’ failure to provide
14 Plaintiff Gatica other non-party Aggrieved Employees with second 30-minute meal periods to
15 which they were entitled, Defendants kept no records of meal start and end times for second
16 meal periods.

17 105. California Labor Code section 1174(d) provides that “[e]very person employing
18 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
19 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or
23 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
24 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other
25 non-party Aggrieved Employees showing the daily hours they worked and the wages paid
26 thereto as a result of failing to record the off-the-clock hours that they worked.

27 106. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
28 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover

1 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

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

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

18 109. During the relevant time period, Defendants failed to pay Plaintiffs and other
19 non-party Aggrieved Employees all wages due to them within any time period specified by
20 California Labor Code section 204 including, but not limited to, overtime wages, minimum
21 wages, meal and rest period premiums, and/or reporting time pay.

22 110. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES UPON TERMINATION**

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

26 111. At all times relevant herein set forth, California Labor Code sections 201 and
27 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
28 time of discharge are due and payable immediately, and that if an employee voluntarily leaves

1 his or her employment, his or her wages shall become due and payable not later than seventy-
2 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice
3 of his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 112. On information and belief, Defendants have a company-wide practice or policy
6 of failing to adhere to the time requirements set forth in Labor Code sections 201 and 202 for
7 the issuance of final wages to their former employees. For example, Defendants terminated
8 Plaintiff Mueller in or around June 2020. As of the date of the initial complaint, Plaintiff
9 Mueller still had not received her final wages from Defendants. Thus, Defendants failed to pay
10 Plaintiff Mueller her final wages immediately, in violation of Labor Code section 201.

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

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

22 **FAILURE TO PAY REPORTING TIME PAY**

23 **VIOLATION OF LABOR CODE SECTION 1198**

24 115. California Labor Code section 1198 makes it illegal to employ an employee
25 under conditions of labor that are prohibited by the applicable wage order. California Labor
26 Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission
27 shall be the . . . standard conditions of labor for employees. The employment of any employee
28 . . . under conditions of labor prohibited by the order is unlawful."

116. 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).

117. Upon information and belief, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because Defendants failed to pay other non-party 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.

118. During the relevant period, Defendants had a company-wide practice of sending other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other non-party Aggrieved Employees for half of their scheduled shift. Although other non-party Aggrieved Employees would report to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, other non-party Aggrieved Employees would occasionally be scheduled to work six (6) or more hours, but would be sent home after two (2) hours because business was slow and would only be compensated for two (2) hours instead of half the scheduled day’s work. Accordingly, other non-party 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)(A)

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

FAILURE TO PROVIDE SUITABLE RESTING FACILITIES
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(13)(B)

120. At all relevant times herein, 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(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

121. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a resting facility within their restaurants, with reasonable or no modification, but instead denied, and continue to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Plaintiffs and other non-party Aggrieved Employees were forced to adjust to areas not conducive to resting, such as leaning up against the restaurant wall outside, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

122. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Plaintiffs and other non-party Aggrieved Employees are legally allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them any area within their stores to cease work and recover. For example, Plaintiffs and other non-party Aggrieved Employees were not allowed to sit in the restaurant at all during working hours. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of their rights to suitable resting facilities under California law.

123. As a result of Defendants’ company-wide policy and/or practice of denying employees any area to rest within their restaurants and company-wide failure to provide resting facilities in their restaurants, Plaintiffs and other non-party Aggrieved Employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. Defendants’ failure to provide suitable resting facilities to Plaintiffs and other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

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

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(B)

125. At all relevant times herein, 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.”

126. 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.” During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

127. Defendants’ California restaurants 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 Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiffs and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

128. Defendants did not provide Plaintiffs and other non-party 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 Plaintiffs and other non-party Aggrieved Employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of their rights to a seat or stool under California law.

129. As a result of Defendants' 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, Plaintiffs and other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

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

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

131. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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

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

8 132. First, Defendants on a company-wide basis required that Plaintiffs and other
9 non-party Aggrieved Employees use their own personal cellular phones and/or cellular data to
10 carry out their job duties, but failed to reimburse them for the costs of their work-related cellular
11 phone expenses. Specifically, Defendants required Plaintiffs and other non-party Aggrieved
12 Employees to install applications and/or software on their phones, including, but not limited to,
13 the Workforce application used by Defendants for employee scheduling. Plaintiffs and other
14 non-party Aggrieved Employees were required to use their personnel cellular phone data to
15 access and communicate with Defendants’ management regarding scheduling matters. In
16 addition, Plaintiff Gatica spent approximately 10-40 minutes per week responding to calls and
17 text messages from Defendants’ management to his personal cellular phone regarding work-
18 related matters, including Yelp reviews, employee scheduling, and ingredient orders. Although
19 Defendants required Plaintiffs and other non-party Aggrieved Employees to utilize their
20 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
21 reimburse them for this cost.

22 133. Second, Defendants had a company-wide policy of requiring Plaintiff Gatica and
23 other non-party Aggrieved Employees to utilize their own personal vehicles for work purposes,
24 such as picking up food and restaurant supplies from other restaurant locations, but failed to
25 reimburse them for all costs of travel, including mileage. Although Defendants required
26 Plaintiff Gatica and other non-party Aggrieved Employees to utilize their own vehicles to travel
27 to and from the other restaurant locations, Defendants did not reimburse them for all of their
28 travel expenses.

134. Third, Defendants on a company-wide basis expected Plaintiffs and other non-party Aggrieved Employees to report to work in clean and presentable uniforms, including, but not limited to, chef's hats and shirts bearing Defendants' company logo. However, Defendants did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff Mueller with one (1) chef's hat and one (1) company shirt during her employment, and only provided Plaintiff Gatica with three (3) company shirts during his employment. Defendants denied Plaintiff Mueller's request for additional uniform items to wear during the week. Because Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with an adequate number of uniform items, Plaintiffs and other non-party Aggrieved Employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses for doing so. For example, due to the nature of restaurant work, Plaintiffs' and other non-party Aggrieved Employees' uniforms would become stained, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, and/or more frequently than other clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms. Therefore, Defendants failed to maintain uniforms they required Plaintiffs and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

135. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with the actual tools required for use on the job, including company phones, company vehicles, as well as an adequate number of uniforms, and access to laundering services. Or, Defendants could have reimbursed Plaintiffs and other non-party Aggrieved Employees for their cost of their cellular phone usage, mileage, and laundering expenses or access to laundering services. Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved Employees. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum wage.

136. Defendants' company-wide policy and/or practice of passing on their operating

costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other non-party Aggrieved Employees for necessary business-related expenses and costs.

137. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT**

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

138. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

139. During the relevant time period, Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

140. Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

1 **PRAYER FOR RELIEF**

2 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
3 judgment against Defendants, jointly and severally, as follows:

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

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

7 2. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
9 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
10 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
11 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
12 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
14 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
15 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 1198 and
16 the applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the
17 applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to
18 reimburse business expenses) and 2810.5 (by failing to provide written notice of information
19 material to employment).

20 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
21 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
22 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

23 4. For attorneys' fees and costs pursuant to California Labor Code section
24 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
25 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
26 1197, 1198, 2802, and 2810.5;

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

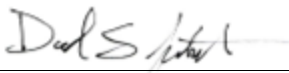
28 6. For such other and further relief as the Court may deem equitable and

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appropriate.

Dated: April 19, 2022

Respectfully submitted,
Capstone Law APC

By: 
Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

Attorneys for Plaintiffs Shantiel Mueller and
Marc Gatica

EXHIBIT “1”



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February 4, 2021

VIA ONLINE SUBMISSION

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

Subject: *Shantiel Mueller v. Urban Plates, LLC, et al.*

Dear PAGA Administrator:

This office represents Shantiel Mueller in connection with her claims under the California Labor Code. Ms. Mueller was an employee of URBAN PLATES, LLC and/or URBAN PLATES-DEL MAR, LLC. For the purpose of this letter, Ms. Mueller collectively refers to these entities as "URBAN PLATES."

The employers may be contacted directly at the addresses below:

URBAN PLATES, LLC
2053 SAN ELIJO AVENUE
CARDIFF CA 92007

URBAN PLATES-DEL MAR LLC
2053 SAN ELIJO AVENUE
CARDIFF BY THE SEA CA 92007

Ms. Mueller intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Mueller seeks relief on behalf of herself, the State of California, and other persons who are or were employed by URBAN PLATES 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.

URBAN PLATES employed Ms. Mueller as an hourly paid, non-exempt employee from approximately November 2019 to June 2020. Ms. Mueller worked for URBAN PLATES in a line service position at its restaurant located in Carlsbad, California. During her employment, Ms. Mueller typically worked eight (8) to nine (9) hours per day, three (3) to five (5) days per week, in the afternoons and evenings. At the time Ms. Mueller's employment with URBAN PLATES ended, she earned approximately \$13.00 per hour. Her job duties included, without limitation, restocking the salad bar, plating food items, reviewing and preparing customer orders, greeting customers, cleaning tables and work stations, mopping the floors, taking out trash, and providing customer service.

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

URBAN PLATES’ Company-Wide and Uniform Payroll and HR Practices

URBAN PLATES, LLC and URBAN PLATES-DEL MAR LLC are California limited liability companies. On information and belief, URBAN PLATES is headquartered at 2053 San Elijo Avenue, Cardiff, California 92007. URBAN PLATES owns and operates approximately 18 fast-casual restaurant locations throughout California, including restaurants in Orange County, Los Angeles County, San Diego County, Contra Costa County and Alameda County. URBAN PLATES markets itself as a restaurant serving nutritious made-from-scratch meals using sustainably sourced ingredients at affordable prices. As of 2020, URBAN PLATES employed approximately 900 employees nationwide, the majority of which are employed within California. Upon information and belief, URBAN PLATES maintains a single, centralized Human Resources (HR) department at its company headquarters in Cardiff, California, for all non-exempt, hourly paid employees working for URBAN PLATES in California, including Ms. Mueller and other aggrieved employees. At all relevant times, URBAN PLATES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Mueller and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

During the relevant period, upon information and belief, URBAN PLATES had, and continues to have, a company-wide policy of discouraging and impeding Ms. Mueller and other aggrieved employees from recording hours worked that were outside of their scheduled shifts to limit the amount of overtime employees could accrue. Thus, Ms. Mueller and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not permitted to remain clocked in to record this time worked. For example, URBAN PLATES pressured Ms. Mueller to clock out at the end of her scheduled shift when the restaurant was closing, but then continue to perform closing duties off-the-clock. URBAN PLATES expected employees to clock out at their exact scheduled shift end time, but also expected employees to continue performing their closing tasks off-the-clock if they were not complete. As a result, Ms. Mueller would clock out and then at times spend 20-30 minutes sweeping and mopping floors, taking out the trash, and performing other closing tasks. Other aggrieved employees similarly were required by URBAN PLATES to clock out at their designated shift end times but continue to perform closing tasks off-the-clock. At all times, Ms. Mueller and other aggrieved employees remained under the control of URBAN PLATES. This off-the-clock work could have been recorded by URBAN PLATES, but it refused to do so to avoid payment of additional wages to Ms. Mueller and other aggrieved employees.

In addition, on information and belief, URBAN PLATES had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each restaurant's labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this inadequate meal period coverage, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Moreover, URBAN PLATES had a practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees performed work during meal periods for which they were not paid. Moreover, URBAN PLATES's company-wide timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because URBAN PLATES implemented a timekeeping system set to lock out aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed. Thus, URBAN PLATES's timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

URBAN PLATES knew or should have known that as a result of these company-wide practices and/or policies, Ms. Mueller and other aggrieved employees were working before or after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Mueller and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for

overtime premium pay. Therefore, Ms. Mueller and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

Ms. Mueller and 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 Wage Order No. 5 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As set forth above, due to URBAN PLATES's restrictions on overtime accrual, URBAN PLATES systematically failed to pay Ms. Mueller and other aggrieved employees for actual hours worked before and/or after scheduled shifts, because these hours were not accurately recorded. In addition, as stated, Ms. Mueller and other aggrieved employees were required to perform work off-the-clock, such as sweeping and mopping the floors, taking out the trash, and/or performing other restaurant closing tasks.

Further, as stated above, due to URBAN PLATES's uniform practice of utilizing labor budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, URBAN PLATES implemented a timekeeping system that automatically locked other aggrieved employees out for meal periods for a full 30 minutes, which further prevented them from recording hours worked when their meal periods were cut short and/or interrupted.

Moreover, URBAN PLATES required Ms. Mueller and other aggrieved employees spend time off-the-clock laundering their uniforms, which would become heavily soiled from work, but did not compensate them for this time. Specifically, URBAN PLATES, on a company-wide basis, expected Ms. Mueller and other aggrieved employees to report to work in clean and presentable uniforms, including, but not limited to, chef's hats and shirts bearing URBAN PLATES' company logo. However, URBAN PLATES did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. URBAN PLATES only provided Ms. Mueller with one (1) chef's hat and one company shirt during her entire employment, and denied Ms. Mueller's request for

additional uniform items to wear during the workweek. Because URBAN PLATES did not provide Ms. Mueller and other aggrieved employees with an adequate number of uniform items, Ms. Mueller and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. Due to the nature of restaurant work, Ms. Mueller's and other aggrieved employees' uniforms would become stained, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, and/or more frequently than other items, thus spending time outside of work to maintain the upkeep of their uniforms. URBAN PLATES failed to compensate Ms. Mueller and other aggrieved employees for this time.

Thus, URBAN PLATES did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, URBAN PLATES 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, and 1197.1. Accordingly, URBAN PLATES regularly failed to pay at least minimum wages to Ms. Mueller and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Mueller and other aggrieved employees are therefore 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 (Cal. 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 set forth above, URBAN PLATES had, and continues to have, a company-wide policy and/or practice of utilizing labor budgets, understaffing its locations, and assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Mueller and other aggrieved employees from taking compliant meal periods to which they were entitled. As a result, Ms. Mueller and/or other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

As stated, URBAN PLATES did not schedule meal periods, resulting in Ms. Mueller and other aggrieved employees waiting extended periods of time before taking meal periods due to the heavy workload. For example, during her employment, URBAN PLATES did not provide Ms. Mueller with meal periods within the first five (5) hours of her shift. At times, Ms. Mueller was required to continue working six (6) or more hours into her shift before she was released by URBAN PLATES to take a meal period. Moreover, as described above, URBAN PLATES implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of URBAN PLATES's timekeeping system, other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked.

Further, URBAN PLATES 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. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. 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.

URBAN PLATES knew or should have known that as a result of its policies, Ms. Mueller and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. URBAN PLATES further knew or should have known that it did not pay Ms. Mueller and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

URBAN PLATES also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Mueller and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that URBAN PLATES did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because URBAN PLATES did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, URBAN PLATES failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Mueller 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 (3½) 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, URBAN PLATES regularly failed to authorize and permit Ms. Mueller 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, URBAN PLATES’s company-wide labor budget policies and resultant understaffing, heavy workload, and lack of break coverage prevented Ms. Mueller and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. URBAN PLATES also failed to schedule rest periods, which, coupled with URBAN PLATES’s failure to provide adequate rest period coverage, further led to Ms. Mueller and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, URBAN PLATES maintained and implemented a company-wide practice and/or policy requiring that Ms. Mueller and other aggrieved employees remain on URBAN PLATES’s premises during their rest periods. Because Ms. Mueller and other aggrieved employees were restricted from leaving the URBAN PLATES’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, URBAN PLATES effectively maintained control over Ms. Mueller and other aggrieved employees during rest periods, and, as a result of this rest period policy, URBAN PLATES did not relinquish control over Ms. Mueller and other aggrieved employees during rest periods.

As a result, Ms. Mueller and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Ms. Mueller frequently worked through her shifts without taking her 10-minute rest periods two (2) to three (3) times per week due to URBAN PLATES’s unmanageable workload, lack of rest period coverage, and failure to schedule rest periods for employees. Ms. Mueller also had her rest periods interrupted or cut short twice per week by URBAN PLATES’s managers who would instruct her to return to work when the restaurant became busy with customers.

URBAN PLATES 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 URBAN PLATES did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because URBAN PLATES did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, URBAN PLATES failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Mueller 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. URBAN PLATES has not provided Ms. Mueller and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 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, URBAN PLATES has knowingly and intentionally provided Ms. Mueller and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, URBAN PLATES issued uniform wage statements to Ms. Mueller and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, URBAN PLATES violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; 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), URBAN PLATES willfully failed to maintain accurate payroll records for Ms. Mueller 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 Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, URBAN PLATES failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Mueller and other aggrieved employees, in violation of section 1198. Also, in light of URBAN PLATES’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, URBAN PLATES kept no records of meal start and end times for second meal periods in violation of section 1198.

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

Ms. Mueller 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, URBAN PLATES failed to pay Ms. Mueller and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Mueller 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, URBAN PLATES had a company-wide practice or policy of failing to adhere to the time requirements set forth in Labor Code sections 201 and 202 for the issuance of final wages to its former employees. For example, URBAN PLATES terminated Ms. Mueller in or around June 2020. To date, Ms. Mueller still has not received her final wages from URBAN PLATES. Thus, URBAN PLATES failed to pay Ms. Mueller her final wages immediately, in violation of Labor Code section 201.

Additionally, URBAN PLATES willfully failed to pay Ms. Mueller and other aggrieved employees who are no longer employed by URBAN PLATES all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving URBAN PLATES' employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Mueller 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

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(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

URBAN PLATES's California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. URBAN PLATES could have provided Ms. Mueller and other aggrieved employees with a resting facility within its restaurants, with reasonable or no

modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Ms. Mueller and other aggrieved employees were forced to adjust to areas not conducive to resting, such as leaning up against the restaurant wall outside, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

URBAN PLATES did not provide Ms. Mueller and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Ms. Mueller and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, URBAN PLATES denied them any area within their restaurants to cease work and recover. For example, Ms. Mueller and other aggrieved employees were not allowed to sit in the restaurant at all during working hours. Moreover, URBAN PLATES did not inform Ms. Mueller and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of URBAN PLATES's company-wide policy and/or practice of denying employees any area to rest within their restaurants and company-wide failure to provide resting facilities in their restaurants, Ms. Mueller and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. URBAN PLATES' failure to provide suitable resting facilities to Ms. Mueller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(B).

Ms. Mueller and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring URBAN PLATES into compliance with California's resting facilities requirements, pursuant to Labor Code sections 1194.5 and/or 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 section 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 section 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 section 14(B) during "lulls in operation." *Id.*

URBAN PLATES's California restaurants 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 Ms. Mueller and other aggrieved employees during lulls in operation. URBAN PLATES could have provided Ms. Mueller and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

URBAN PLATES did not provide Ms. Mueller 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 Ms. Mueller and other aggrieved employees engaged in duties in which the nature of the work required standing, URBAN PLATES denied them the use of seats nearby during lulls in their work duties. Moreover, URBAN PLATES did not inform Ms. Mueller and other aggrieved employees of their rights to a seat or stool under California law.

As a result of URBAN PLATES's 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, Ms. Mueller and other aggrieved employees were forced to stand during shifts and denied seats. URBAN PLATES's failure to provide suitable seating to Ms. Mueller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Ms. Mueller and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring URBAN PLATES 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 § 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)

URBAN PLATES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because URBAN PLATES 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. URBAN PLATES 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 URBAN PLATES provided to them, URBAN PLATES would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, upon information and belief, during the relevant time period, URBAN PLATES, on a company-wide basis, required that Ms. Mueller and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Specifically, URBAN PLATES required Ms. Mueller and other aggrieved employees to install applications and/or software on their phones, including, but not limited to, the Workforce application used by URBAN PLATES for employee scheduling. Ms. Mueller and other aggrieved employees were required to use their personnel cellular phone data to access and communicate with URBAN PLATES's management regarding scheduling matters. Although URBAN PLATES required Ms. Mueller and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, URBAN PLATES failed to reimburse them for this cost.

Second, URBAN PLATES had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up food and restaurant supplies from other restaurant locations, but failed to reimburse them for all costs of travel, including mileage. Although URBAN PLATES required other aggrieved employees to utilize their own vehicles to travel to and from the other restaurant locations, URBAN PLATES did not reimburse them for all of their travel expenses.

Third, URBAN PLATES, on a company-wide basis, expected Ms. Mueller and other aggrieved employees to report to work in clean and presentable uniforms, including, but not limited to, chef's hats and shirts bearing URBAN PLATES's company logo. However, URBAN PLATES did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, URBAN PLATES only provided Ms. Mueller with one (1) chef's hat and one company shirt during her employment. And, URBAN PLATES denied Ms. Mueller's request for additional

uniform items to wear during the week. Because URBAN PLATES did not provide Ms. Mueller and other aggrieved employees with an adequate number of uniform items, Ms. Mueller and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, due to the nature of restaurant work, Ms. Mueller's and other aggrieved employees' uniforms would become stained, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, and/or more frequently than other clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms. Therefore, URBAN PLATES failed to maintain uniforms it required Ms. Mueller and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

URBAN PLATES could have provided Ms. Mueller and other aggrieved employees with the actual tools required for use on the job, including company phones, company vehicles, as well as an adequate number of uniforms, access to laundering services. Or, URBAN PLATES could have reimbursed Ms. Mueller and other aggrieved employees for their cost of their cellular phone usage, mileage, and laundering expenses or a uniform maintenance allowance. Instead, URBAN PLATES passed these operating costs off onto Ms. Mueller and other aggrieved employees. At all relevant times, Ms. Mueller did not earn at least two (2) times the minimum wage.

Thus, URBAN PLATES had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Mueller 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 § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

URBAN PLATES failed to provide Ms. Mueller and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). URBAN PLATES's failure to provide Ms. Mueller and other aggrieved employees with written notice of basic information regarding their employment with URBAN PLATES is in violation of Labor Code section 2810.5.

Ms. Mueller and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." URBAN PLATES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Mueller's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Mueller seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Mueller, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against URBAN PLATES for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. URBAN PLATES shall pay Ms. Mueller and all other aggrieved employees employed by URBAN PLATES at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. URBAN PLATES 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. URBAN PLATES shall conduct a survey or interview all current and former aggrieved employees in California who worked for URBAN PLATES 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 travel, uniform and laundering costs, cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. URBAN PLATES 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, 516, and 1198. URBAN PLATES 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. URBAN PLATES shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for URBAN PLATES' benefit, including, but not limited to, costs of travel, uniform and laundering expenses, and cellular phone expenses, as required by Labor Code section 2802.
6. URBAN PLATES shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. URBAN PLATES shall provide Ms. Mueller and all aggrieved employees employed by URBAN PLATES 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. URBAN PLATES shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
9. URBAN PLATES shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

10. URBAN PLATES 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, 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:

Jamie R. Greene
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

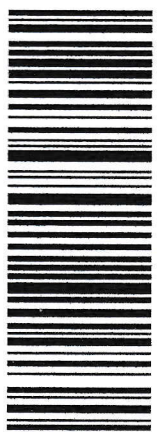
Best Regards,

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

Jamie R. Greene

Copy: URBAN PLATES, LLC (via U.S. Certified Mail); URBAN PLATES-DEL MAR LLC (via U.S. Certified Mail)

one
LAW APC
1000
Park East, Ste 1000
CA 90067



7020 1290 0001 8879 0718

URBAN PLATES, LLC
2053 SAN ELIJO AVENUE
CARDIFF CA 92007



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URBAN PLATES, LLC
2053 SAN ELIJO AVENUE
CARDIFF CA 92007



9590 9402 1512 5362 2722 99

2. Article Number (Transfer from service label)

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X

☐ Agent
☐ Addressee

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- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

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URBAN PLATES, LLC
Street and Apt. No., or PO Box No.
2053 SAN ELIJO AVENUE
City, State, ZIP+4®
CARDIFF CA 92007

Postmark

Here
Mueller v. Urban
Plates, LLC

PS Form 3800, April 2015 PSN 7530-02-000-9047

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UNITED STATES POSTAGE
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 \$007.93⁰
 02 1P
 0000666553 JAN 15 2021
 MAILED FROM ZIP CODE 90067



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URBAN PLATES-DEL MAR LLC
 2053 SAN ELIJO AVENUE
 CARDIFF BY THE SEA CA 92007



9590 9402 1512 5362 2722 82

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0725

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

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☐ Agent
☐ Addressee

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- ☐ Adult Signature
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Registered Mail Restricted Delivery
 (r \$50.00)

Domestic Return Receipt

CERTIFIED MAIL



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Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

URBAN PLATES-DEL MAR LLC
 2053 SAN ELIJO AVENUE
 CARDIFF BY THE SEA CA 92007

Postmark
 Here

Mueller V. Urban
 Plates Del Mar LLC

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

one
 LAW APC
 1000 Park East, Ste 1000
 CA 90067

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

URBAN PLATES-DEL MAR LLC
2053 SAN ELIJO AVENUE
CARDIFF BY THE SEA CA 92007



9590 9402 1512 5362 2722 82

2. Article Number (Transfer from service label)

7020 1290 0001 8879 0725

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

A. Signature

X Kara Butler

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery	
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D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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☐ Adult Signature
☐ Adult Signature Restricted Delivery

☐ Adult Signature
☒ Certified Mail®

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☐ Priority Mail Express®☐ Registered Mail™

☐ Registered Mail
☐ Registered Mail Restricted
Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™
☐ Signature Confirmation

☐ Signature Service
Restricted Delivery

Domestic Return Receipt

EXHIBIT “2”

DANIEL S. JONATHAN
310.712.8007 Direct
Daniel.Jonathan@capstonelawyers.com

September 21, 2021

VIA ONLINE SUBMISSION

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

Subject: *Marc Gatica v. Urban Plates, LLC, et al.*

Dear PAGA Administrator:

This office represents Marc Gatica in connection with his claims under the California Labor Code. Mr. Gatica was an employee of URBAN PLATES, LLC and/or URBAN PLATES-DEL MAR, LLC. For the purpose of this letter, Mr. Gatica collectively refers to these entities as “URBAN PLATES.”

The employers may be contacted directly at the addresses below:

URBAN PLATES, LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075

URBAN PLATES-DEL MAR LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075

Mr. Gatica 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. Gatica seeks relief on behalf of himself, the State of California, and other persons who are or were employed by URBAN PLATES 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.

URBAN PLATES employed Mr. Gatica as an hourly paid, non-exempt employee from approximately March 2016 to March 2021. Mr. Gatica worked for URBAN PLATES as a sous chef at its restaurants located in Brea and Aliso Viejo, California. During his employment, Mr. Gatica typically worked ten (10) to twelve (12) hours per day, five (5) days per week, usually working the closing shift. At the time Mr. Gatica’s employment with URBAN PLATES ended, he earned approximately \$18.90 per hour. His job duties included, without limitation, preparing orders, catering, and managing the kitchen.

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

URBAN PLATES’ Company-Wide and Uniform Payroll and HR Practices

URBAN PLATES, LLC and URBAN PLATES-DEL MAR LLC are California limited liability companies. URBAN PLATES owns and operates approximately 18 fast-casual restaurant locations throughout California, including restaurants in Orange County, Los Angeles County, San Diego County, Contra Costa County and Alameda County. URBAN PLATES markets itself as a restaurant serving nutritious made-from-scratch meals using sustainably sourced ingredients at affordable prices. As of 2020, URBAN PLATES employed approximately 900 employees nationwide, the majority of which are employed within California. Upon information and belief, URBAN PLATES maintains a single, centralized Human Resources (HR) department at its company headquarters in Solana Beach, California, for all non-exempt, hourly paid employees working for URBAN PLATES in California, including Mr. Gatica and other aggrieved employees. At all relevant times, URBAN PLATES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gatica and other aggrieved employees, regardless of its location or position.

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

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

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

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

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

First, during the relevant period, upon information and belief, URBAN PLATES had, and continues to have, a company-wide policy of discouraging and impeding Mr. Gatica and other aggrieved employees from recording hours worked that were outside of their scheduled shifts to limit the amount of overtime employees could accrue. Thus, Mr. Gatica and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not permitted to remain clocked in to record this time worked. For example, URBAN PLATES often instructed Mr. Gatica to pick up restaurant ingredients on the way to work, which would take approximately thirty (30) minutes. URBAN PLATES also pressured Mr. Gatica to clock out at the end of his scheduled shift when the restaurant was closing, but then continue to perform closing duties off-the-clock. URBAN PLATES expected employees to clock out at their exact scheduled shift end time, but also expected employees to continue performing their closing tasks off-the-clock if they were not complete. As a result, Mr. Gatica would clock out and then at times spend approximately thirty (30) minutes handling calls from customers, assisting other employees in the kitchen, or dropping off food for customers who had gotten incorrect orders. Other aggrieved employees similarly were required by URBAN PLATES to clock out at their designated shift end times but continue to perform closing tasks off-the-clock. Furthermore, Mr. Gatica and other aggrieved employees had to complete “Huddle” training once per month off the clock, which would take thirty (30) minutes to two (2) hours. At all times, Mr. Gatica and other aggrieved employees remained under the control of URBAN PLATES. This off-the-clock work could have been recorded by URBAN PLATES, but it refused to do so to avoid payment of additional wages to Mr. Gatica and other aggrieved employees.

Second, on information and belief, URBAN PLATES had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each restaurant’s labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this inadequate meal period coverage, Mr. Gatica and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Third, URBAN PLATES had a practice of failing to schedule meal periods, which further caused Mr. Gatica and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Gatica and other aggrieved employees performed work during meal periods for which they were not paid. Moreover, URBAN PLATES’s company-wide timekeeping system further prevented Mr. Gatica and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because URBAN PLATES implemented a timekeeping system set to lock out aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal before the 30 minutes elapsed. Thus, URBAN PLATES’s timekeeping system further prevented Mr. Gatica and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Furthermore, because URBAN PLATES frowned upon employees accruing meal period penalties, URBAN PLATES pressured Mr. Gatica and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had

received a compliant meal period, in order to strictly limit meal penalties that URBAN PLATES would otherwise owe. For example, URBAN PLATES's management instructed Mr. Gatica to clock out and record compliant meal periods even though he frequently worked through his first and second meal periods due to his heavy workload.

Fourth, URBAN PLATES's policies and/or practices of understaffing its locations and strict limitations on overtime accrual also led to Mr. Gatica and other aggrieved employees performing work off-the-clock, on their days off and outside of their scheduled shifts. For example, Mr. Gatica was required to respond to work-related calls and text messages from URBAN PLATES's management and employees on his days off or outside of his scheduled shifts about work-related issues, such as questions about Yelp reviews or late ingredient deliveries (which would cause Mr. Gatica to perform follow-up calls with suppliers). Mr. Gatica estimates he spent approximately 5-20 minutes on each of his days off responding to work-related calls and text messages to his personal cellular phone. Additionally, Mr. Gatica and other aggrieved employees were required to occasionally cover shifts at other restaurant locations and attend mandatory training sessions and meetings, but were not compensated for their travel time. Furthermore, Mr. Gatica and other aggrieved employees were required to monitor URBAN PLATES's online scheduling app during their personal time to keep abreast of when they would be scheduled to work. Again, this off-the-clock work could have been recorded by URBAN PLATES, but it refused to do so to avoid payment of additional wages to Mr. Gatica and other aggrieved employees.

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

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

Mr. Gatica and 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 set forth above, due to URBAN PLATES’s restrictions on overtime accrual, URBAN PLATES systematically failed to pay Mr. Gatica and other aggrieved employees for actual hours worked before and/or after scheduled shifts, because these hours were not accurately recorded. In addition, as stated, Mr. Gatica and other aggrieved employees were required to perform work off-the-clock, such as handling calls from customers, assisting other employees in the kitchen, dropping off food for customers who had gotten incorrect orders, answering calls and text messages from management on their days off, completing “Huddle” training, monitoring the online scheduling app, and picking up ingredients on their way to work.

Further, as stated above, due to URBAN PLATES’s uniform practice of utilizing labor budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of meal period coverage, Mr. Gatica and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, URBAN PLATES implemented a timekeeping system that automatically locked Mr. Gatica and other aggrieved employees out for meal periods for a full thirty (30) minutes, which further prevented them from recording hours worked when their meal periods were cut short and/or interrupted. Additionally, to limit the meal penalties that URBAN PLATES would otherwise owe, URBAN PLATES pressured Mr. Gatica and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Moreover, URBAN PLATES required Mr. Gatica and other aggrieved employees spend time off-the-clock laundering their uniforms, which would become heavily soiled from work, but did not compensate them for this time. Specifically, URBAN PLATES, on a company-wide basis, expected Mr. Gatica and other aggrieved employees to report to work in clean and presentable uniforms, including, but not limited to, chef’s hats and shirts bearing URBAN PLATES’ company logo. However, URBAN PLATES did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. URBAN PLATES only provided Mr. Gatica with three (3) company shirts during his entire employment. Because URBAN PLATES did not provide Mr. Gatica and other aggrieved employees with an adequate number of uniform items, Mr. Gatica and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. Due to the nature of restaurant work, Mr. Gatica’s and other aggrieved employees’ uniforms would become stained, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, and/or more frequently than other items, thus spending time outside of work to maintain the upkeep of their uniforms. URBAN PLATES failed to compensate Mr. Gatica and other aggrieved employees for this time.

Thus, URBAN PLATES did not pay at least minimum wages for all hours worked by Mr. Gatica and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, URBAN PLATES 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, URBAN PLATES regularly failed to pay at least minimum wages to Mr. Gatica 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. Gatica and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As set forth above, URBAN PLATES had, and continues to have, a company-wide policy and/or practice of utilizing labor budgets, understaffing its locations, assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Gatica and other aggrieved employees from taking compliant meal periods to which they were entitled. In conjunction with understaffing, URBAN PLATES had a company-wide practice or policy of failing to schedule meal periods for employees, which exacerbated the lack of meal period coverage. As a result, Mr. Gatica and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

Moreover, as described above, URBAN PLATES implemented an electronic timekeeping system that locked Mr. Gatica and other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of URBAN PLATES's timekeeping system, Mr. Gatica and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time worked.

Moreover, as stated, because URBAN PLATES frowned upon employees accruing meal period penalties, URBAN PLATES's management pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that URBAN PLATES would otherwise owe.

Further, URBAN PLATES did not provide Mr. Gatica and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Gatica and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Gatica 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.

URBAN PLATES knew or should have known that as a result of its policies, Mr. Gatica and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. URBAN PLATES further knew or should have known that it did not pay Mr. Gatica and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

URBAN PLATES also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gatica and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that URBAN PLATES did pay meal period premium wages to Mr. Gatica and other aggrieved employees, it did so at the incorrect rates. Because URBAN PLATES did not properly calculate Mr. Gatica's and other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premiums.

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

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

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

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

During the relevant time period, URBAN PLATES regularly failed to authorize and permit Mr. Gatica 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, URBAN PLATES's company-wide labor budget policies and resultant understaffing, heavy workload, and lack of break coverage prevented Mr. Gatica and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. URBAN PLATES also failed to schedule rest periods, which, coupled with URBAN PLATES's failure to provide adequate rest period coverage, further led to Mr. Gatica and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, URBAN PLATES maintained and implemented a company-wide practice and/or policy requiring that Mr. Gatica and other aggrieved employees remain on URBAN PLATES's premises during their rest periods. Because Mr. Gatica and other aggrieved employees were restricted from leaving the URBAN PLATES's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, URBAN PLATES effectively maintained control over Mr. Gatica and other aggrieved employees during rest periods, and, as a result of this rest period policy, URBAN PLATES did not relinquish control over Mr. Gatica and other aggrieved employees during rest periods.

As a result, Mr. Gatica and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Gatica frequently worked through his shifts without taking his 10-minute rest periods due to URBAN PLATES's unmanageable workload, lack of rest period coverage, and failure to schedule rest periods for employees.

Additionally, because URBAN PLATES sought to avoid rest period penalties, URBAN PLATES's management pressured Mr. Gatica and other aggrieved employees to falsely acknowledge receiving compliant rest and meal periods.

URBAN PLATES also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Gatica and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that URBAN PLATES did pay rest period premiums to other aggrieved employees, it did so at the incorrect rates. Because URBAN PLATES did not properly calculate Mr. Gatica's and other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premiums.

Accordingly, URBAN PLATES failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gatica 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. URBAN PLATES has not provided Mr. Gatica and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

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

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or his social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; 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), URBAN PLATES willfully failed to maintain accurate payroll records for Mr. Gatica 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, URBAN PLATES failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Gatica and other aggrieved employees, in violation of section 1198. Also, as stated, URBAN PLATES engaged in a company-wide practice and/or policy of falsifying Mr. Gatica’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. Gatica and other aggrieved employees. Furthermore, in light of URBAN PLATES’s failure to provide Mr. Gatica and other aggrieved employees with second 30-minute meal periods to which they were entitled, URBAN PLATES kept no records of meal start and end times for second meal periods in violation of section 1198.

Because URBAN PLATES failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Gatica 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. Gatica 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. Gatica 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, URBAN PLATES failed to pay Mr. Gatica and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Gatica 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 his employment, his or his 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 his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

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

Mr. Gatica 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

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(13)(B) provides that "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

URBAN PLATES's California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. URBAN PLATES could have provided Mr. Gatica and other aggrieved employees with a resting facility within its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Mr. Gatica and other aggrieved employees were forced to adjust to areas not conducive to resting, such as leaning up against the restaurant wall outside, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

URBAN PLATES did not provide Mr. Gatica and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Gatica and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, URBAN PLATES denied them any area within their restaurants to cease work and recover. For example, Mr. Gatica and other aggrieved employees were not allowed to sit in the restaurant at all during working hours. Moreover, URBAN PLATES did not inform Mr. Gatica and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of URBAN PLATES's company-wide policy and/or practice of denying employees any area to rest within their restaurants and company-wide failure to provide resting facilities in their restaurants, Mr. Gatica and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. URBAN PLATES' failure to provide suitable resting facilities to Mr. Gatica and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Gatica and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring URBAN PLATES into compliance with California's resting facilities requirements, pursuant to Labor Code sections 1194.5 and/or 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)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." 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 his 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 he must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

URBAN PLATES's California restaurants 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. Gatica and other aggrieved employees during lulls in operation. URBAN PLATES could have provided Mr. Gatica and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

URBAN PLATES did not provide Mr. Gatica 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. Gatica and other aggrieved employees engaged in duties in which the nature of the work required standing, URBAN PLATES denied them the use of seats nearby during lulls in their work duties. Moreover, URBAN PLATES did not inform Mr. Gatica and other aggrieved employees of their rights to a seat or stool under California law.

As a result of URBAN PLATES's 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. Gatica and other aggrieved employees were forced to stand during shifts and denied seats. URBAN PLATES's failure to provide suitable seating to Mr. Gatica and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Gatica and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring URBAN PLATES 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 § 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)

URBAN PLATES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because URBAN PLATES 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. URBAN PLATES 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 URBAN PLATES provided to them, URBAN PLATES 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 would occasionally be scheduled to work six (6) or more hours, but would be sent home after two (2) hours because business was slow and would only be compensated for two (2) hours instead of half the scheduled day's work. 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 § 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 his 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, upon information and belief, during the relevant time period, URBAN PLATES, on a company-wide basis, required that Mr. Gatica and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Specifically, URBAN PLATES required Mr. Gatica and other aggrieved employees to install applications and/or software on their phones, including, but not limited to, the application used by URBAN PLATES for employee scheduling. Furthermore, Mr. Gatica spent approximately 1040 minutes per week responding to calls and text messages from URBAN PLATES’s management to his personal cellular phone regarding work-related matters, including Yelp reviews, employee scheduling, and ingredient orders. Although URBAN PLATES required Mr. Gatica and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, URBAN PLATES failed to reimburse them for this cost.

Second, URBAN PLATES had a company-wide policy of requiring Mr. Gatica and other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up food and restaurant supplies, delivering orders, and covering shifts at other restaurant locations, but failed to reimburse them for all costs of travel, including mileage. Although URBAN PLATES required Mr. Gatica and other aggrieved employees to utilize their own vehicles to travel to and from the other restaurant locations, URBAN PLATES did not reimburse them for all of their travel expenses.

Third, URBAN PLATES, on a company-wide basis, expected Mr. Gatica and other aggrieved employees to report to work in clean and presentable uniforms, including, but not limited to, chef’s hats and shirts bearing URBAN PLATES’s company logo. However, URBAN PLATES did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, URBAN PLATES only provided Mr. Gatica with three (3) company shirts during his employment. Because URBAN PLATES did not provide Mr. Gatica and other aggrieved employees with an adequate number of uniform items, Mr. Gatica and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, due to the nature of restaurant work, Mr. Gatica’s and other aggrieved employees’ uniforms would become stained, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing, and/or more frequently than other clothing items, thus incurring additional laundry expenses for the upkeep of their uniforms. Therefore, URBAN PLATES failed to maintain uniforms it required Mr. Gatica and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

URBAN PLATES could have provided Mr. Gatica and other aggrieved employees with the actual tools required for use on the job, including company phones, company vehicles, as well as an adequate number of uniforms or access to laundering services. Or, URBAN PLATES could have reimbursed Mr. Gatica and other aggrieved employees for their cost of their cellular phone usage, mileage, and laundering expenses or provided a uniform maintenance allowance. Instead, URBAN PLATES passed these operating costs off onto Mr. Gatica and other aggrieved employees. At all relevant times, Mr. Gatica did not earn at least two (2) times the minimum wage.

Thus, URBAN PLATES 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. Gatica 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 § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

URBAN PLATES failed to provide Mr. Gatica and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). URBAN PLATES's failure to provide Mr. Gatica and other aggrieved employees with written notice of basic information regarding their employment with URBAN PLATES is in violation of Labor Code section 2810.5.

Mr. Gatica and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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."

URBAN PLATES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gatica's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gatica 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. Gatica, 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 URBAN PLATES for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Daniel S. Jonathan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Daniel S. Jonathan

Copy: URBAN PLATES, LLC (via U.S. Certified Mail); URBAN PLATES-DEL MAR LLC (via U.S. Certified Mail)

CERTIFIED MAIL



7017 0530 0000 8095 5646

Stone

LAW APC

1000
Park East, Ste 1000
San Jose, CA 95067



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1. Article Addressed to:

URBAN PLATES, LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075



9590 9402 1512 5362 2486 76

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5646

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

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A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

URBAN PLATES, LLC
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SOLANA BEACH CA 92075

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- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

URBAN PLATES, LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075

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Cathica v. Urban
Plates, LLC

PS Form 3800, April 2015 PSN 7530-02-000-9047

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URBAN PLATES-DEL MAR LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075



9590 9402 1512 5362 2486 83

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5653

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

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- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

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D. Is delivery address different from item 1? If YES, enter delivery address below:

- ☐ Yes
☐ No

3. Service Type

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☐ Return Receipt for Merchandise
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Domestic Return Receipt

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☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

URBAN PLATES-DEL MAR LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Gatica v. Urban
Plates - Del Mar LLC

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1. Article Addressed to:

URBAN PLATES, LLC
420 STEVENS, SUITE 150
SOLANA BEACH CA 92075



9590 9402 1512 5362 2486 76

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5646

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

DButler

☐ Agent☐ Addressee

B. Received by (Printed Name)

DButler

C. Date of Delivery

9-24-21

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

3. Service Type

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **May 3, 2022**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Marisa Janine-Page, (SBN: 199316)
mjp@chpllaw.com

Jack R. Leer, (SBN: 184982)
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Tel.: (858) 720-8080

Fax: (858) 720-6680

Attorneys for Defendant

URBAN PLATES LLC and URBAN
PLATES-DEL MAR LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 3, 2022**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name

Signature

