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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

NORMA AGUILAR, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other aggrieved employees,

Plaintiff,

vs.

SEASIDE DINING GROUP, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21CV390701

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
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
9 of 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
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on September 15, 2021, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons within the
3 County of Santa Clara, and have violated the requirements of the California Labor Code and
4 applicable Wage Order in this county which give rise to the penalties sought in this action. Cal.
5 Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California
6 Labor Code and the applicable Wage Order in at least one location within the County of Santa
7 Clara, including Defendants' locations in Gilroy (8425 San Ysidro Ave, Gilroy, California) and
8 San Jose (1390 South First St., San Jose, California; and 2484 Berryessa Rd, San Jose,
9 California). Pursuant to California Civil Code of Procedure section 393, venue is proper for the
10 recovery of a penalty imposed by statute in the county in which the cause, or some part of the
11 cause, arose. Because Defendants have employees in Santa Clara County and Plaintiff could
12 bring an action filed under PAGA in any county in which an aggrieved employee worked and
13 Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v.*
14 *Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

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

19 THE PARTIES

20 6. Plaintiff Norma Aguilar is a resident of Los Angeles, in Los Angeles County,
21 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
22 approximately July 2018 to May 2021. Plaintiff worked for Defendants as a Shift Leader,
23 Server and Cook at their Denny's restaurant location in Hawthorne, California. Plaintiff
24 typically worked eight (8) to twelve (12) or more hours per day, six (6) to seven (7) days per
25 week. At the time Plaintiff's employment with Defendants ended, she was compensated
26 approximately \$16.50 per hour. Plaintiff typically worked the night shift from either 10:00
27 p.m. to 6:00 a.m. or 6:00 p.m. to 6:00 a.m. and/or the day shift from 2:00 p.m. to 10:00 p.m.
28 Plaintiff's job duties included, without limitation, serving tables, preparing food, conducting

1 inventory, washing dishes, bussing tables, managing registers, stocking supplies, maintaining
2 the restaurant premises, and covering for managers as needed.

3 7. On information and belief, Defendants required some employees, including
4 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
5 employment. On further information and belief, Defendants' arbitration agreement was and is
6 both procedurally and substantively unconscionable. Specifically, Defendants presented new
7 hires with a "Dispute Resolution Agreement" ("Arbitration Agreement") during the
8 onboarding process, which had to be reviewed and acknowledged immediately. In fact, upon
9 information and belief, the Arbitration Agreement was one of several documents presented to
10 new employees for signature during the orientation process, including Employee Handbook,
11 Seaside Dining Group, Inc. Meal Allowance, Policy Against Harassment, and Seaside Dining
12 Group Employee Conduct Policy, among other documents. Also, employees did not have a
13 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
14 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
15 all of the other on-boarding documents.

16 8. SEASIDE DINING GROUP, INC. was and is, upon information and belief, a
17 California corporation, and at all times hereinafter mentioned, an employer whose employees
18 are engaged throughout this county and the State of California.

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

23 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of SEASIDE DINING GROUP, INC., at all
25 relevant times.

26 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, SEASIDE DINING
28 GROUP, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "SEASIDE"), each

1 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
2 each of the other co-Defendants and was acting within the course and scope of such agency,
3 employment, joint venture, or concerted activity with legal authority to act on the others'
4 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
5 policy of Defendants.

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

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

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

24 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
25 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
26 non-party Aggrieved Employees because Defendants have:

- 27 (a) jointly exercised meaningful control over the work performed by
28 Plaintiff and other non-party Aggrieved Employees;

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

16 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
17 there has existed a unity of interest and ownership between Defendants such that any
18 individuality and separateness between the entities has ceased.

19 17. SEASIDE DINING GROUP, INC. and DOES 1 through 10 are therefore alter
20 egos of each other.

21 18. Adherence to the fiction of the separate existence of Defendants would permit
22 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
23 from liability for the wrongful acts committed by them.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 19. Defendants own and operate at least 21 Denny's franchise locations throughout
26 California. Upon information and belief, Defendants maintain a single, centralized Human
27 Resources (HR) department at their corporate headquarters in Ladera Ranch, California, for
28 all non-exempt, hourly paid employees working for Defendants in California, which is

1 responsible for the recruiting and hiring of new employees, and communicating and
2 implementing Defendants' company-wide policies, including timekeeping policies and meal
3 and rest period policies, to employees throughout California.

4 20. In particular, Plaintiff and other non-party Aggrieved Employees, on
5 information and belief, received the same standardized documents and/or written policies.
6 Upon information and belief, the usage of standardized documents and/or written policies,
7 including new-hire documents, indicate that Defendants dictated policies at the corporate level
8 and implemented them company-wide, regardless of their employees' assigned locations or
9 positions. Upon information and belief, Defendants set forth uniform policies and procedures
10 in several documents provided at an employee's time of hire.

11 21. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in Ladera Ranch, California, which processes
13 payroll for all non-exempt, hourly paid employees working for Defendants at their various
14 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
15 Employees. Based upon information and belief, Defendants issue the same formatted wage
16 statements to all non-exempt, hourly paid employees in California, irrespective of their work
17 locations. Upon information and belief, Defendants process payroll for departing employees
18 in the same manner throughout the State of California, regardless of the manner in which each
19 employee's employment ends.

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

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

26 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain
4 wages for overtime compensation.

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

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

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

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
28 payment of one (1) additional hour of pay at their regular rates of pay when they were not

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

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive complete and accurate wage statements in accordance with California law. In
9 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
10 were not provided complete and accurate wage statements.

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

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 timely payment of all wages earned upon termination of employment. In violation of the
18 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
19 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
20 and/or meal and rest premiums, within permissible time periods.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 timely payment of wages during their employment. In violation of the California Labor Code,
24 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
25 including, but not limited to, overtime wages, minimum wages, and/or meal and rest
26 premiums, within permissible time periods.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to one

1 day's rest in seven. In violation of the California Labor Code, Defendants required Plaintiff and
2 other non-party Aggrieved Employees to work more than six consecutive days without a day of
3 rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day
4 thereof.

5 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive split shift premium pay when Defendants required Plaintiff and other non-party
8 Aggrieved Employees to return to work for an additional shift in the same day, after having
9 been clocked out for more than an hour. In violation of the California Labor Code, Defendants
10 did not pay Plaintiff and other non-party Aggrieved Employees all split-shift premiums due.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive reimbursement for all business-related expenses and costs they incurred during the
14 course and scope of their employment and that they did not receive reimbursement of
15 applicable business-related expenses and costs incurred.

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

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

28 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

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

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

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

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

met:

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

43. On September 15, 2021, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-844680-21. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated September 15, 2021, is attached hereto as "Exhibit 1."

44. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the written notice described above, and the LWDA has not responded that it intends to

1 investigate Plaintiff's claims, and Defendants have not cured the violations.

2 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
3 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
4 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
5 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

26 48. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

51. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff 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), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

52. 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 Plaintiff 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 Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

- 1 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
3 and other non-party Aggrieved Employees with meal periods, as set
4 forth below;
- 5 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to authorize and
7 permit Plaintiff and other non-party Aggrieved Employees to take rest
8 periods, as set forth below;
- 9 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
10 IWC Wage Order for failure to provide accurate and complete wage
11 statements to Plaintiff and other non-party Aggrieved Employees, as set
12 forth below;
- 13 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
14 IWC Wage Order for failure to maintain payroll records, as set forth
15 below;
- 16 (g) Violation of Labor Code section 204 for failure to pay all earned wages
17 during employment, as set forth below;
- 18 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
19 earned wages upon termination, as set forth below;
- 20 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
21 day's rest in seven to Plaintiff and other non-party Aggrieved
22 Employees, as set forth below;
- 23 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
24 Order for failing to pay split-shift premiums when Plaintiff and other
25 non-party Aggrieved Employees returned to work for an additional shift
26 in the same day, after having been clocked out for more than an hour, as
27 set forth below; and
- 28 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

53. 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.”

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

55. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

56. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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.

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

1 in a day on the seventh (7th) day of work.

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

13 59. Further, Defendants utilized a timekeeping system that automatically locked out
14 employees at the fifth hour of their shift in order to reflect compliant meal periods, regardless of
15 whether employees received compliant meal periods, and to prevent Plaintiff and other non-
16 party Aggrieved Employees from incurring meal period penalties. Indeed, Defendants'
17 timekeeping system locked the point of sale ("POS") machines that employees used to input the
18 customer orders at the fifth hour of each employee's shift (if they had not yet clocked out for
19 their meal period) so that they were forced to clock out and record compliant meal periods, in
20 order to strictly limit the meal penalties that Defendants would otherwise owe. Moreover,
21 Defendants' managers pressured Plaintiff and other non-party Aggrieved Employees to continue
22 working when clocked out and/or instructed them to use the manager's identification number to
23 log back into the POS system to in order to reflect compliant meal periods.

24 60. As a result of Defendants' company-wide policies and practices, at least 3-4
25 times or more per week, Plaintiff was forced to clock out for her meal period by the fifth hour of
26 her shift but pressured by her managers to continue working through her entire meal period due
27 to the chronic understaffing of the restaurant. Moreover, at least 2-3 times or more per week,
28 Plaintiff's meal periods would be interrupted and cut short by at least 10 minutes because she

1 would be contacted on her personal cellular phone by management during her meal period and
2 instructed to return to work for the remainder of her meal period in order to meet customer
3 demand. Additionally, the timekeeping system prevented Plaintiff and other non-party
4 Aggrieved Employees from clocking back in early from their meal periods until 30 minutes had
5 elapsed, further preventing Plaintiff and other non-party Aggrieved Employees from being able
6 to record any off-the-clock work that they performed during their meal periods. Consequently,
7 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
8 which they were not paid.

9 61. Second, during the relevant period, Defendants had, and continue to have, a
10 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
11 Employees from recording hours worked that were outside of their scheduled shifts in order to
12 limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled
13 with Defendants' use of labor budgets and assignment of heavy workloads, led Plaintiff and
14 other non-party Aggrieved Employees to work off-the-clock before the start of their scheduled
15 shift times. For example, during the relevant time period, at least three (3) times for about 45
16 minutes each instance, Plaintiff was required to travel to Defendants' restaurant location in
17 Lynwood, California, to pick up supplies on her way to work and prior to clocking in for the
18 start of her shift. As a further example, at least once during her employment, Plaintiff was
19 required to travel to Defendants' restaurant location in Rowland Heights, California, which
20 added approximately 45 minutes each way to her regular commute, to work a shift at that
21 location due to Defendants' companywide understaffing of their restaurant locations. Thus,
22 Defendants failed to track all of the time that employees spent performing work-related tasks
23 prior to clocking in for the start of their shifts, and Plaintiff and other non-party Aggrieved
24 Employees received no compensation for this pre-shift, off-the-clock time.

25 62. Third, during the relevant time period, as with Defendants' policy and practice of
26 requiring employees to perform work-related tasks prior to clocking in for the start of their
27 shifts, Defendants had, and continue to have, a company-wide policy of requiring Plaintiff and
28 other non-party Aggrieved Employees to work after clocking out at the end of their scheduled

1 shifts but failed to compensate employees for this post-shift, off-the-clock time. For example, at
2 least 3-4 times per week for about 30-60 minutes per each instance, after clocking out at the end
3 of her shift, Plaintiff was required to continue working and restock supplies, count inventory
4 and/or wait for employees or managers who may have been running late before Plaintiff was
5 permitted to leave. As a further example, once a week for about 45-60 minutes, Plaintiff and
6 other non-party Aggrieved Employees would be required to complete online trainings about
7 new menu items or other work-related topics off-the-clock while at home or during their off
8 days because their managers discouraged and impeded Plaintiff and other non-party Aggrieved
9 Employees from recording hours worked that were outside of their scheduled shifts in
10 furtherance of Defendants' company-wide policy and practice to limit the amount of overtime
11 employees could accrue. Further, at least 1-2 times per week for about 10-15 minutes per each
12 instance, Plaintiff's managers would call her on her personal cellular phone on her off-days to
13 discuss scheduling issues or other work-related issues but failed to compensate Plaintiff for this
14 off-the-clock time. Thus, Defendants failed to track all of the time that employees spent
15 performing work-related tasks after clocking out at the end of their shifts, and Plaintiff and other
16 non-party Aggrieved Employees received no compensation for this post-shift, off-the-clock
17 time.

18 63. Moreover, on information and belief, in order to further limit employees from
19 accruing overtime, Defendants' managers would alter Plaintiff's and other non-party Aggrieved
20 Employees' time records by reducing the hours that employees actually worked and/or adjusting
21 or moving overtime hours worked to be reflected on days that the employees were not actually
22 working, or to weeks when the employees had worked fewer hours.

23 64. Defendants knew or should have known that as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 assigned duties off-the-clock before and after their shifts and during meal periods, and were
26 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
27 other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty
28 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium

1 pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime
2 wages for all of the overtime hours they actually worked.

3 65. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
4 correct overtime rate for the recorded overtime hours that they generated. In addition to an
5 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
6 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
7 California Labor Code, Defendants failed to incorporate all compensation, including incentive
8 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
9 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
10 times when other non-party Aggrieved Employees worked overtime and received these other
11 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
12 than required.

13 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 the balance of overtime compensation as required by California law, violates the provisions of
15 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
16 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
17 558 and/or 2699(a), (f), and (g).

18 **FAILURE TO PAY MINIMUM WAGES**

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

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

27 68. First, as set forth above, due to Defendants' company-wide practice of utilizing
28 labor budgets, understaffing, assignment of heavy workloads, and subsequent lack of meal

1 period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking
2 all uninterrupted meal periods to which they were entitled and were required to work off-the-
3 clock. Moreover, as set forth above, in order to prevent employees from accruing meal period
4 penalties, Defendants' timekeeping system forced employees to clock out by the fifth hour of
5 their shift to reflect complaint meal periods but management pressured employees to continue
6 working, time for which they were not paid. Also, as set forth above, Defendants systematically
7 failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
8 unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and other
9 non-party Aggrieved Employees for 30 minutes when they clocked out for a meal period.

10 69. Second, as stated above, during the relevant time period, as a result of
11 Defendants' policy of limiting the amount of overtime employees could accrue, Defendants
12 required Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock
13 outside of their scheduled shifts, such as, traveling to Defendants' distant restaurant locations to
14 pick up supplies and/or to cover shifts at the distant, understaffed restaurant locations;
15 restocking supplies; counting inventory; waiting for other managers or employees to arrive to
16 work before they could leave the work premises; completing mandatory online trainings; and
17 responding to phone calls and/or voicemails from managers regarding scheduling matters or
18 other work-related issues. However, Defendants failed to compensate Plaintiff and other non-
19 party Aggrieved Employees at least minimum wages for the time they spent performing work-
20 related tasks before and after their scheduled shift times.

21 70. Moreover, as stated, on information and belief, Defendants' managers would
22 alter Plaintiff's and other non-party Aggrieved Employees' time records by reducing the hours
23 that employees actually worked in order to further limit employees from accruing overtime.

24 71. Thus, Defendants did not pay at least minimum wages for all hours worked by
25 Plaintiff and non-party Aggrieved Employees. Also, to the extent that these off-the-clock
26 hours did not qualify for overtime premium payment, Defendants did not pay at least
27 minimum wages for those hours worked off-the-clock in violation of California Labor Code
28 sections 1182.12, 1194, 1197, and 1198.

72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198. Plaintiff 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 AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

74. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a 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).

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

76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, 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.

77. During the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or

1 limited payroll allocation, which, combined with the assignment heavy workloads, and failure to
2 adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and
3 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
4 uninterrupted meal periods to which they were entitled. For example, as stated, at least 2-3
5 times or more per week, Plaintiff's meal periods would be cut short by at least 10 minutes
6 because she would be contacted on her personal cellular phone by management while she was
7 clocked out for her meal period, required to answer her cellular phone during her meal period,
8 and instructed to return to work and continue working through the remainder of her meal period
9 in order to meet customer demand and assist with the heavy workload.

10 78. Further, as stated, to prevent Plaintiff and other non-party Aggrieved Employees
11 from incurring meal period penalties that Defendants would otherwise owe, Defendants'
12 timekeeping system automatically locked out employees at the fifth hour of their shift (if they
13 had not yet taken their meal period) by locking the POS machines that employees used to input
14 customer orders and forced employees to clock out for their meal period in order to reflect
15 compliant meal periods. Further, Defendants' managers pressured Plaintiff and other non-party
16 Aggrieved Employees to clock out for their meal period but continue working, or instructed
17 them to use the manager's identification number to log back in and continue working when the
18 POS machines locked them out for meal periods in order to reflect compliant meal periods. As
19 stated, as a result of Defendants' companywide policies and practices, at least 3-4 times or more
20 per week, Plaintiff was forced to clock out for her meal period by the fifth hour of her shift but
21 pressured by her managers to continue working through her meal period. Instead, Plaintiff
22 would actually take her meal period at the sixth or seventh hour of her shift.

23 79. Furthermore, as stated, Defendants' company-wide timekeeping system
24 prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked
25 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
26 and other non-party Aggrieved Employees once they clocked out for a meal period, and would
27 not permit them to clock back in from a meal period until 30 minutes had elapsed.
28 Consequently, Plaintiff and other non-party Aggrieved Employees performed work during meal

1 periods for which they were not paid.

2 80. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
3 Employees with second 30-minute meal periods on days that they worked in excess of 10 hours
4 in one day. For example, during the relevant time period, Plaintiff worked shifts in excess of 10
5 hours in one day at least four (4) days per week and missed at least three out of four second 30-
6 minute meal periods each week to which she was entitled. Plaintiff and other non-party
7 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to
8 meal periods and were not relieved of all duties.

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

15 82. Furthermore, Defendants have also engaged in a company-wide practice and/or
16 policy of not paying all meal period premiums owed when compliant meal periods are not
17 provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
18 Employees have not received premium pay for missed, interrupted, shortened, or late meal
19 periods. Alternatively, to the extent that Defendants did pay other non-party Aggrieved
20 Employees premium pay for missed, late, interrupted and shortened meal periods, Defendants
21 did not pay other non-party Aggrieved Employees at the correct rate of pay for premiums
22 because Defendants systematically failed to include all forms of compensation, such as
23 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular
24 rate of pay.

25 83. Thus, Defendants failed to provide Plaintiff 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. Plaintiff and other non-party Aggrieved Employees are

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

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

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

5 84. 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 Plaintiff's and other
7 non-party Aggrieved Employees' employment by Defendants.

8 85. 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 86. 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
17 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
18 employer must "relinquish any control over how employees spend their break time, and
19 relieve their employees of all duties—including the obligation that an employee remain on
20 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
21 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

22 87. Pursuant to the applicable IWC Wage Order and California Labor Code section
23 226.7(c), Plaintiff 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 88. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
28 period per each four (4) hour period worked or major fraction thereof. As with meal periods,

1 Defendants' company-wide use of labor budgeting and/or limited payroll allocation,
2 understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and
3 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
4 to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled
5 with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and
6 other non-party Aggrieved Employees not being authorized and permitted to take compliant
7 rest periods.

8 89. Furthermore, Defendants maintained and implemented a company-wide on-
9 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
10 Employees remain on Defendants' premises during their rest periods. Because Plaintiff and
11 other non-party Aggrieved Employees were restricted from leaving the premises during rest
12 periods, they were denied the ability to use their rest periods freely for their own purposes,
13 such as running personal errands. Thus, Defendants effectively maintained control over
14 Plaintiff and other non-party Aggrieved Employees during rest periods.

15 90. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
18 periods as they were entitled. For example, Plaintiff had to forego her rest periods entirely
19 during each shift because the restaurant was busy, did not have coverage, and there was an
20 expectation for all employees to work through their rest periods.

21 91. Defendants also engaged in a company-wide practice and/or policy of not
22 paying all rest period premiums owed when compliant rest periods are not authorized and
23 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
24 Employees have not received premium pay for all missed rest periods. Alternatively, to the
25 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
26 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
27 Employees at the correct rate of pay for premiums because Defendants failed to include all
28 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms

1 of remuneration, in the regular rate of pay.

2 92. Accordingly, Defendants failed to authorize and permit all compliant rest periods
3 and failed to pay the full rest period premiums due. Defendants' conduct violates the
4 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
5 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
6 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

14 94. During the relevant time period, Defendants have knowingly and intentionally
15 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
16 inaccurate wage statements. For example, Defendants issued uniform wage statements to
17 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
18 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
19 the pay period, including rates of pay for overtime wages and/or meal and rest period
20 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
21 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

22 95. Because Defendants did not record the time Plaintiff and other non-party
23 Aggrieved Employees spent working off-the-clock and deducted time from their records for
24 meal periods that were interrupted and/or missed (and therefore time for which they should
25 have been paid), Defendants did not list the correct amount of gross wages and net wages
26 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
27 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
28 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved

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

4 96. Additionally, because Defendants did not calculate other non-party Aggrieved
5 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
6 and rest period premiums, Defendants did not list the correct amount of gross wages in
7 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
8 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
9 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
10 of pay for overtime wages and/or meal and rest period premiums, in violation of section
11 226(a)(9).

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

20 98. California Labor Code section 1174(d) provides that "[e]very person employing
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
27 civil penalty if they fail to maintain accurate and complete records as required by section
28 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),

1 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
2 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
3 as a result of failing to record the off-the-clock hours that they worked.

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

21 100. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
22 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 101. At all relevant times herein set forth, California Labor Code section 204
27 requires that all wages earned by any person in any employment between the 1st and the 15th
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the 16th and the 26th day of the month during which
2 the labor was performed. Labor Code section 204 further provides that all wages earned by
3 any person in any employment between the 16th and the last day, inclusive, of any calendar
4 month, other than those wages due upon termination of an employee, are due and payable
5 between the 1st and the 10th day of the following month.

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

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

16 104. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

18 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

27 106. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
28 Employees who are no longer employed by Defendants the earned and unpaid wages set forth

1 above, including but not limited to, overtime wages, minimum wages, meal and rest period
2 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
3 Defendants' employ.

4 107. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
5 who are no longer employed by Defendants their wages earned and unpaid at the time of
6 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
7 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
8 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
9 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

11 **VIOLATION OF LABOR CODE SECTIONS 551, 552, AND 558**

12 108. At all relevant times herein, California Labor Code section 551 provides that
13 every person employed in any occupation of labor is entitled to one day's rest in seven.
14 Additionally, California Labor Code section 552 prohibits employers from requiring employees
15 to work more than six consecutive days without a day of rest.

16 109. At all relevant times herein set forth, California Labor Code section 556 exempts
17 an employer from the day-of-rest requirement when the total hours worked by an employee do
18 not exceed 30 hours in any week or six hours in any one day thereof.

19 110. Labor Code section 558(a) provides "[a]ny employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the Industrial Welfare Commission
22 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
23 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
24 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
25 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
26 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
27 criminal penalty provided by law."

28 111. During the relevant time period, Defendants scheduled Plaintiff and other non-

1 party Aggrieved Employees to work eight (8) or more hours per day and more than seven (7)
2 consecutive days in a workweek. Because Plaintiff and other non-party Aggrieved Employees
3 worked over 30 hours per week and over six (6) hours per day in a workweek, they were not
4 exempt from the day-of-rest requirement. To the extent that Plaintiff and other non-party
5 Aggrieved Employees may have signed purported waivers of their right to a day's rest in seven,
6 such waivers are invalid.

7 112. Thus, during the relevant time period, and in violation of Labor Code sections
8 551 and 552, Defendants caused Plaintiff and other non-party Aggrieved Employees to work
9 more than six days in seven. Plaintiff and other non-party Aggrieved Employees are therefore
10 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
11 (g).

12 **FAILURE TO PAY SPLIT-SHIFT PAY**
13 **VIOLATION OF LABOR CODE SECTION 1198**

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

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

25 115. Defendants violated California Labor Code section 1198 and California Code of
26 Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and other
27 non-party Aggrieved Employees a split-shift premium when they returned to work for an
28 additional shift in the same day, after having been clocked out for more than an hour. Plaintiff

1 and other non-party Aggrieved Employees were required to report to work for their scheduled
2 morning shifts, and then return later to complete their scheduled evening or overnight shifts.
3 When this occurred, Defendants did not always pay Plaintiff and other non-party Aggrieved
4 Employees an additional hour at minimum wage. At all relevant times, Plaintiff and other non-
5 party Aggrieved Employees did not reside at Defendants' locations.

6 116. Defendants' failure to compensate Plaintiff and other non-party Aggrieved
7 Employees with split-shift pay when they returned to work for an additional shift in the same
8 day, after having been clocked out for more than an hour, violates the applicable IWC Wage
9 Order and California Labor Code section 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
11 2699(a), (f), and (g).

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 117. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the
20 employer requires the use of tools or equipment or they are necessary to the performance of a
21 job, such tools and equipment shall be provided and maintained by the employer, except that
22 an employee whose wages are at least two (2) times the minimum wage may provide and
23 maintain hand tools and equipment customarily required by the particular trade or craft."

24 118. First, during the relevant time period, Defendants, on a company-wide basis,
25 required that Plaintiff and other non-party Aggrieved Employees use their own mobile devices,
26 including but not limited to personal cellular phones, and/or mobile data to carry out their job
27 duties but failed to reimburse them for the costs of their work-related mobile device expenses.
28 For example, managers and/or supervisors would contact Plaintiff and other non-party

1 Aggrieved Employees on their mobile devices regarding scheduling issues and other work-
2 related matters on their off-days. At least 1-2 times per week for 10-15 minutes each instance,
3 Plaintiff spent time on her personal cellular phone responding to phone calls from her
4 supervisors and/or managers. In addition, Defendants required that Plaintiff download two
5 mobile applications on her personal mobile device to track and input inventory and perform
6 other work-related tasks, and Plaintiff spent at least two (2) hours during each shift using the
7 mobile applications and her personal mobile data to perform her job duties. Although
8 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal
9 mobile devices to carry out their work-related responsibilities, Defendants failed to fully
10 reimburse them for this cost.

11 119. Second, during the relevant time period, Defendants, on a company-wide basis,
12 required that Plaintiff and other non-party Aggrieved Employees use their own personal
13 vehicles to run company errands, or travel to Defendants' distant restaurant locations to cover
14 shifts at those locations. For example, at least three (3) times during the relevant time period,
15 Plaintiff was required to use her personal vehicle and drive approximately 8-10 miles out of her
16 normal commute to pick up supplies from Defendants' restaurant location in Lynwood,
17 California, on her way to work. Additionally, during the relevant time period, Plaintiff was
18 required to use her personal vehicle and travel at least 40 miles further roundtrip than her
19 regular commute to Defendants' restaurant location in Rowland Heights, California, and cover a
20 shift at that location because they were understaffed. Although Defendants required Plaintiff
21 and other non-party Aggrieved Employees to utilize their personal vehicles to carry out their
22 work-related responsibilities, Defendants failed to fully reimburse them for their mileage or
23 travel expenses.

24 120. Third, during the relevant time period, Defendants required Plaintiff and other
25 non-party Aggrieved Employees to purchase their own office supplies necessary for the
26 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
27 example, Plaintiff spent at least \$10 to \$15 per month purchasing pens, markers and notepads
28 because Defendants failed to provide them with these necessary office supplies which

1 employees required to be able to take customer orders and perform their job duties. Although
2 Defendants required Plaintiff and other non-party Aggrieved Employees to use office supplies
3 to carry out their work-related responsibilities, Defendants failed to provide them with the
4 necessary supplies or fully reimburse them for their out-of-pocket costs to purchase necessary
5 supplies.

6 121. Fourth, during the relevant time period, Defendants required Plaintiff and other
7 non-party Aggrieved Employees to wear uniforms bearing the Denny's company logo,
8 including uniform shirts and/or aprons. However, Defendants did not provide their employees
9 with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants
10 only provided Plaintiff and other non-party Aggrieved Employees with one (1) polo shirt and
11 one (1) apron at the time of hire, and Plaintiff was provided with two (2) more of these uniform
12 items during her employment. Because Defendants failed to provide Plaintiff and other non-
13 party Aggrieved Employees with an adequate number of uniform items in relation to their
14 scheduled shifts and for the tasks they were required to perform, Plaintiff and other non-party
15 Aggrieved Employees had to wash their uniforms more frequently than they otherwise do
16 laundry, and incur expenses in doing so. For example, due to the nature of restaurant work,
17 Plaintiff's and other non-party Aggrieved Employees' uniform items would become stained
18 with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix
19 these clothes in with other laundry. As a result, they had to wash their uniform items separately
20 from their regular clothing, thus incurring additional laundry expenses for the upkeep of their
21 uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-
22 party Aggrieved Employees to wear during their shifts and forced them to incur the cost of
23 maintaining employee uniforms.

24 122. Defendants could have provided Plaintiff and other non-party Aggrieved
25 Employees with the actual tools for use on the job, such as company mobile devices, company
26 vehicles, and office supplies, as well as an adequate number of uniform items or access to
27 laundering services. Or, Defendants could have reimbursed employees for the costs of their
28 mobile device usage and/or mobile data, travel, mileage, office supplies, and laundering

1 expenses or provided a uniform maintenance allowance. Instead, Defendants passed these
2 operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant
3 times, Plaintiff did not earn at least two (2) times the minimum wage.

4 123. Defendants' company-wide policy and/or practice of not reimbursing
5 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
6 and other non-party Aggrieved Employees violates California Labor Code section 2802.
7 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

14 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
15 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
16 amount.

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

18 2. That the Court declare, adjudge and decree that Defendants violated the
19 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
20 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
21 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
22 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
23 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
24 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
25 earned wages upon termination); 204 (by failing to timely pay all earned wages during
26 employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to
27 provide split-shift pay); and 2802 (by failing to reimburse business expenses);

28 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,

1 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
2 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

3 4. For attorneys' fees and costs pursuant to California Labor Code section
4 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
5 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12,
6 1194, 1197, 1198, and 2802;

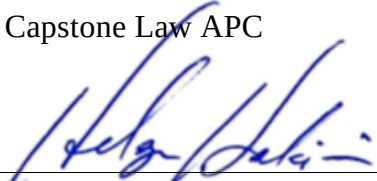
7 5. For pre-judgment and post-judgment interest as provided by law; and

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

10
11 Dated: November 22, 2021

Respectfully submitted,

Capstone Law APC

12
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14 By: 

Orlando Villalba

Helga Hakimi

Roxanna Tabatabaeepour

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17 Attorneys for Plaintiff Norma Aguilar
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EXHIBIT “1”



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ANTHONY CASTILLO
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September 15, 2021

VIA ONLINE SUBMISSION

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

Subject: *Norma Aguilar v. Seaside Dining Group Inc.*

Dear PAGA Administrator:

This office represents Norma Aguilar in connection with her claims under the California Labor Code. Ms. Aguilar was an employee of SEASIDE DINING GROUP INC. ("SEASIDE").

The employer may be contacted directly at the address below:

SEASIDE DINING GROUP, INC.
3 JULIA STREET
LADERA RANCH, CA 92694

Ms. Aguilar 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. Aguilar seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SEASIDE 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.

SEASIDE employed Ms. Aguilar as an hourly paid, non-exempt employee from approximately July 2018 to May 2021. Ms. Aguilar worked for SEASIDE as a Shift Leader, Server and Cook at its Denny's restaurant location in Hawthorne, California. During her employment, Ms. Aguilar typically worked eight (8) to twelve (12) or more hours per day, six (6) to seven (7) days per week. Ms. Aguilar typically worked the night shift from either 10:00 p.m. to 6:00 a.m. or 6:00 p.m. to 6:00 a.m. and/or the day shift from 2:00 p.m. to 10:00 p.m. Ms. Aguilar was compensated approximately \$16.50 per hour at the time her employment ended with SEASIDE. Her job duties included, without limitation, serving tables, preparing food, conducting inventory, washing dishes, bussing tables, managing registers, stocking supplies, maintaining the restaurant premises, and covering for managers as needed.

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

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

SEASIDE DINING GROUP, INC. is a California corporation which operates Denny’s restaurant franchise locations throughout California. SEASIDE operates approximately 21 restaurant locations in California. Upon information and belief, SEASIDE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Ladera Ranch, California, for all non-exempt, hourly paid employees working for SEASIDE in California, including Ms. Aguilar and other aggrieved employees. At all relevant times, SEASIDE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Aguilar and other aggrieved employees, regardless of its location or position.

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

SEASIDE willfully failed to pay all overtime wages owed to Ms. Aguilar and other aggrieved employees. During the relevant time period, Ms. Aguilar 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

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

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

Further, SEASIDE utilized a timekeeping system that automatically locked out employees at the fifth hour of their shift in order to reflect compliant meal periods, regardless of whether employees received compliant meal periods, and to prevent Ms. Aguilar and other aggrieved employees from incurring meal period penalties. Indeed, SEASIDE's timekeeping system locked the point of sale ("POS") machines that employees used to input the customer orders at the fifth hour of each employee's shift (if they had not yet clocked out for their meal period) so that they were forced to clock out and record compliant meal periods, in order to strictly limit the meal penalties that SEASIDE would otherwise owe. Moreover, SEASIDE's managers pressured Ms. Aguilar and other aggrieved employees to continue working when clocked out and/or instructed them to use the manager's identification number to log back into the POS system in order to reflect compliant meal periods.

As a result of SEASIDE's companywide policies and practices, at least 3-4 times or more per week, Ms. Aguilar was forced to clock out for her meal period by the fifth hour of her shift but pressured by her managers to continue working through her entire meal period due to the chronic understaffing of the restaurant. Moreover, at least 2-3 times or more per week, Ms. Aguilar's meal periods would be interrupted and cut short by at least 10 minutes because she would be contacted on her personal cellular phone by management during her meal period and instructed to return to work for the remainder of her meal period in order to meet customer demand. Additionally, the timekeeping system prevented Ms. Aguilar and other aggrieved employees from clocking back in early from their meal periods until 30 minutes had elapsed, further preventing Ms. Aguilar and other aggrieved employees from being able to record any off-the-clock work that they performed during their meal periods. Consequently, Ms. Aguilar and other aggrieved employees performed work during meal periods for which they were not paid.

Second, during the relevant period, SEASIDE had, and continues to have, a company-wide policy of discouraging and impeding Ms. Aguilar and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with SEASIDE's use of labor budgets and assignment of heavy workloads, led Ms. Aguilar and other aggrieved employees to work off-the-clock before the start of their scheduled shift times. For example, during the relevant time period, at least three (3) times for about 45 minutes each instance, Ms. Aguilar was required to travel to SEASIDE's restaurant location in Lynwood, California to pick up supplies on her way to work and prior to clocking in for the start of her shift. As a further example, at least once during her employment, Ms. Aguilar was required to travel to SEASIDE's restaurant location in Rowland

Heights, California, which added approximately 45 minutes each way to her regular commute, to work a shift at that location due to SEASIDE's companywide understaffing of its restaurant locations. Thus, SEASIDE failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Ms. Aguilar and other aggrieved employees received no compensation for this pre-shift, off-the-clock time.

Third, during the relevant time period, as with SEASIDE's policy and practice of requiring employees to perform work-related tasks prior to clocking in for the start of their shifts, SEASIDE had, and continues to have, a company-wide policy of requiring Ms. Aguilar and other aggrieved employees to work after clocking out at the end of their scheduled shifts but failed to compensate employees for this post-shift, off-the-clock time. For example, at least 3-4 times per week for about 30-60 minutes per each instance, after clocking out at the end of her shift, Ms. Aguilar was required to continue working and restock supplies, count inventory and/or wait for employees who may have been running late or the restaurant manager who was running errands to return to work before Ms. Aguilar was permitted to leave. As a further example, once a week for about 45-60 minutes, Ms. Aguilar and other aggrieved employees would be required to complete online trainings about new menu items or other work-related topics off-the-clock while at home or during their off days because their managers discouraged and impeded Ms. Aguilar and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in furtherance of SEASIDE's companywide policy and practice to limit the amount of overtime employees could accrue. Additionally, as stated, Ms. Aguilar was required to travel to and from SEASIDE's restaurant location in Rowland Heights, California at least once during her employment, which added approximately 45 minutes to her regular commute, to cover a shift at that location and Ms. Aguilar was not compensated for this time spent traveling. Further, at least 1-2 times per week for about 10-15 minutes per each instance, Ms. Aguilar's managers would call her on her personal cellular phone on her off-days to discuss scheduling issues or other work-related issues but failed to compensate Ms. Aguilar for this off-the-clock time. Thus, SEASIDE failed to track all of the time that employees spent performing work-related tasks after clocking out at the end of their shifts, and Ms. Aguilar and other aggrieved employees received no compensation for this post-shift, off-the-clock time.

Moreover, on information and belief, in order to further limit employees from accruing overtime, SEASIDE's managers would alter Ms. Aguilar's and other aggrieved employees' time records by reducing the hours that employees actually worked and/or adjusting or moving overtime hours worked to be reflected on days that the employees were not actually working, or to weeks when the employees had worked fewer hours.

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

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

SEASIDE's failure to pay Ms. Aguilar and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Aguilar 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. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

First, as set forth above, due to SEASIDE's company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage, Ms. Aguilar 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. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, SEASIDE's timekeeping system forced employees to clock out by the fifth hour of their shift to reflect complaint meal periods but management pressured employees to continue working, time for which they were not paid. Also, as set forth above, SEASIDE systematically failed to pay Ms. Aguilar and other aggrieved employees for actual hours worked during unpaid meal periods, because SEASIDE's timekeeping system locked out Ms. Aguilar and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Second, as stated above, during the relevant time period, as a result of SEASIDE's policy of limiting the amount of overtime employees could accrue, SEASIDE required Ms. Aguilar and other aggrieved employees to perform work off-the-clock prior to the start of their shifts, such as, traveling to distant SEASIDE restaurant locations to pick up supplies and/or to cover shifts at the distant, understaffed restaurant locations. Similarly, SEASIDE required Ms. Aguilar and other aggrieved employees to perform work after they had clocked out at the end of their scheduled shifts, including: restocking supplies; counting inventory; waiting for other managers or employees to arrive to work before they could leave the work premises; completing mandatory online trainings; traveling to distant SEASIDE restaurant locations to cover shifts; and responding to phone calls and/or voicemails from managers regarding scheduling matters or other work-related issues. However, SEASIDE failed to compensate Ms. Aguilar and other aggrieved employees at least minimum wages for the time they spent performing work-related tasks before and after their scheduled shift times.

Moreover, as stated, on information and belief, SEASIDE's managers would alter Ms. Aguilar's and other aggrieved employees' time records by reducing the hours that employees actually worked in order to further limit employees from accruing overtime.

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

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

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

During the relevant time period, as stated, SEASIDE had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment heavy workloads, and failure to adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and prevented Ms. Aguilar and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, as stated, at least 2-3 times or more per week, Ms. Aguilar's meal periods would be cut short by at least 10 minutes because she would be contacted on her personal cellular phone by management while she was clocked out for her meal period, required to answer her cellular phone during her meal period, and instructed to return to work and continue working through the remainder of her meal period in order to meet customer demand and assist with the heavy workload.

Further, as stated, to prevent Ms. Aguilar and other aggrieved employees from incurring meal period penalties that SEASIDE would otherwise owe, SEASIDE's timekeeping system automatically locked out employees at the fifth hour of their shift (if they had not yet taken their meal period) by locking the POS machines that employees used to input customer orders and forced employees to clock out for their meal period in order to reflect compliant meal periods. Further, SEASIDE's managers pressured Ms. Aguilar and other aggrieved employees to clock out for their meal period but continue working, or instructed them to use the manager's identification number to log back in and continue

working when the POS machines locked them out for meal periods in order to reflect compliant meal periods. As stated, as a result of SEASIDE's companywide policies and practices, at least 3-4 times or more per week, Ms. Aguilar was forced to clock out for her meal period by the fifth hour of her shift but pressured by her managers to continue working through her meal period. Instead, Ms. Aguilar would actually take her meal period at the sixth or seventh hour of her shift.

Furthermore, as stated, SEASIDE's company-wide timekeeping system prevented Ms. Aguilar and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Aguilar and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Consequently, Ms. Aguilar and other aggrieved employees performed work during meal periods for which they were not paid.

Moreover, SEASIDE did not provide Ms. Aguilar and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Ms. Aguilar worked shifts in excess of 10 hours in one day at least four (4) days per week and missed at least three out of four second 30-minute meal periods each week to which she was entitled. Ms. Aguilar 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.

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

Furthermore, SEASIDE 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. Aguilar and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that SEASIDE did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, SEASIDE did not pay other aggrieved employees at the correct rate of pay for premiums because SEASIDE systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which

insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, SEASIDE regularly failed to authorize and permit Ms. Aguilar 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, SEASIDE’s company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Ms. Aguilar and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SEASIDE also failed to adhere to a schedule of rest periods, which, coupled with SEASIDE’s failure to provide adequate rest period coverage, further led to Ms. Aguilar and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of SEASIDE’s practices and policies, Ms. Aguilar and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Aguilar had to forego her rest periods entirely during each shift because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods.

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

Accordingly, SEASIDE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Aguilar 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. SEASIDE has not provided Ms. Aguilar 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, SEASIDE has knowingly and intentionally provided Ms. Aguilar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SEASIDE issued uniform wage statements to Ms. Aguilar 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, SEASIDE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

In addition, because SEASIDE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, SEASIDE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). SEASIDE 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 inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SEASIDE willfully failed to maintain accurate payroll records for Ms. Aguilar 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, SEASIDE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Aguilar and other aggrieved employees, in violation of section 1198. As stated, SEASIDE engaged in a company-wide practice and/or policy of falsifying Ms. Aguilar’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Aguilar and other aggrieved employees. Furthermore, in light of SEASIDE’s failure to provide Ms. Aguilar and other aggrieved employees with second 30-minute meal periods to which they were entitled, SEASIDE kept no records of meal start and end times for second meal periods.

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

Ms. Aguilar 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 and 202 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.

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

Ms. Aguilar 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, SEASIDE scheduled Ms. Aguilar and other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. Because Ms. Aguilar and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Aguilar and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SEASIDE caused Ms. Aguilar and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Aguilar 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

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

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

SEASIDE’s failure to compensate Ms. Aguilar and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Ms. Aguilar and 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 No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, SEASIDE, on a company-wide basis, required that Ms. Aguilar 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. For example, Ms. Aguilar and other aggrieved employees would be contacted on their off-days on their personal cellular phones by their managers and/or supervisors regarding scheduling

issues and other work-related matters. At least 1-2 times per week for 10-15 minutes each instance, Ms. Aguilar spent time on her personal cellular phone responding to phone calls from her supervisors and/or managers. In addition, SEASIDE required that Ms. Aguilar download two mobile applications on her personal cellular phone to track and input inventory and perform other work-related tasks, and Ms. Aguilar spent at least two (2) hours during each shift using the mobile applications and her personal cellular phone data to perform her job duties. Although SEASIDE required Ms. Aguilar and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, SEASIDE failed to fully reimburse them for this cost.

Second, during the relevant time period, SEASIDE, on a company-wide basis, required that Ms. Aguilar and other aggrieved employees use their own personal vehicles to run company errands, or travel to distant SEASIDE restaurant locations to cover shifts at those locations. For example, at least three (3) times during the relevant time period, Ms. Aguilar was required to use her personal vehicle and drive approximately 8-10 miles out of her normal commute to pick up supplies from SEASIDE's restaurant location in Lynwood, California on her way to work. Additionally, during the relevant time period, Ms. Aguilar was required to use her personal vehicle and travel at least 40 miles further roundtrip than her regular commute to SEASIDE's restaurant location in Rowland Heights, California, and cover a shift at that location because they were understaffed. Although SEASIDE required Ms. Aguilar and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SEASIDE failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, SEASIDE required Ms. Aguilar and other aggrieved employees to purchase their own office supplies necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Aguilar spent at least \$10 to \$15 per month purchasing pens, markers and notepads because SEASIDE failed to provide them with these necessary office supplies which employees required to be able to take customer orders and perform their job duties. Although SEASIDE required Ms. Aguilar and other aggrieved employees to use office supplies to carry out their work-related responsibilities, SEASIDE failed to provide them with the necessary supplies or fully reimburse them for their out-of-pocket costs to purchase necessary supplies.

Fourth, during the relevant time period, SEASIDE required Ms. Aguilar and other aggrieved employees to wear uniforms bearing the Denny's company logo, including uniform shirts and/or aprons. However, SEASIDE did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SEASIDE only provided Ms. Aguilar and other aggrieved employees with one polo shirt and one apron at the time of hire, and Ms. Aguilar was provided with two (2) more of these uniform items during her employment. Because SEASIDE failed to provide Ms. Aguilar and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Aguilar and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Aguilar's and other aggrieved employees' uniform items would become stained with grease, 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 regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, SEASIDE failed to maintain uniforms they required Ms. Aguilar and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

Thus, SEASIDE 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. Aguilar 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).

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

Accordingly, Ms. Aguilar seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Aguilar, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against SEASIDE for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

1. SEASIDE shall pay Ms. Aguilar and all other aggrieved employees employed by SEASIDE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SEASIDE 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, and provided lawful meal and rest periods.
3. SEASIDE shall conduct a survey or interview all current and former aggrieved employees in California who worked for SEASIDE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, mileage, travel expenses, supply expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SEASIDE shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SEASIDE 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. SEASIDE shall pay Ms. Aguilar and each other aggrieved employee with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as required by California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C).
6. SEASIDE shall reimburse Ms. Aguilar and those aggrieved employees who were required to pay for any business expenses incurred for SEASIDE's benefit, including, but not limited to, personal cellular phone expenses, personal vehicle expenses and mileage costs, out-of-pocket costs incurred to purchase necessary office supplies, uniform laundering expenses incurred, and other expenditures, as required by Labor Code section 2802.
7. SEASIDE shall pay accrued legal interest to Ms. Aguilar and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. SEASIDE shall provide Ms. Aguilar and all aggrieved employees employed by SEASIDE 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).
9. SEASIDE shall provide Ms. Aguilar and all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. SEASIDE shall pay waiting time penalties, equal to 30 days of pay, to each Ms. Aguilar and each former aggrieved employee who was not paid all wages due as described herein.

11. SEASIDE 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 IWC Wage Order No. 5-2001, section 20.

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

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

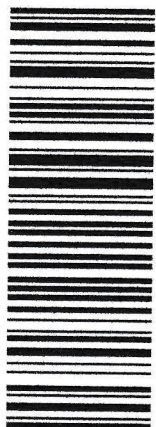
Best Regards,



Anthony Castillo

Copy: SEASIDE DINING GROUP, INC. (via U.S. Certified Mail)

CERTIFIED MAIL®



7017 0530 0000 8095 5639

one
LAW APC
ry Park East, Ste 1000
s, CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

SEASIDE DINING GROUP, INC.
3 JULIA STREET
LADERA RANCH, CA 92694



9590 9402 1512 5362 2486 90

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5639

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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er \$500)

Domestic Return Receipt

SEASIDE DINING GROUP, INC.
3 JULIA STREET
LADERA RANCH, CA 92694

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ 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

SEASIDE DINING GROUP, INC.
3 JULIA STREET
LADERA RANCH, CA 92694

Postmark
Here

Aguilar v. Seaside
Dining Group, Inc.

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

See Reverse for Instructions

7017 0530 0000 8095 5639

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

SEASIDE DINING GROUP, INC.
3 JULIA STREET
LADERA RANCH, CA 92694



9590 9402 1512 5362 2486 90

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5639

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

JANET GRIBBLE

C. Date of Delivery

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

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ 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

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

Domestic Return Receipt