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Attorneys for Plaintiff MARIO ALBERTO PORTILLO AYALA, in a Representative capacity only,
and on behalf of other members of the general public similarly situated,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

MARIO ALBERTO PORTILLO AYALA, in
a Representative capacity only, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

CULICHITOWN RESTAURANTS, INC., a
California Corporation; CULICHILOUNGE
INC., a California Corporation;
CULICHITOWN BAKERSFIELD LLC, a
California Limited Liability Company;
CULICHITOWN BALDWIN PARK LLC, a
California Limited Liability Company;
CULICHITOWN BELL INC., a California
Corporation; CULICHITOWN
MANAGEMENT GROUP INC., a California
Corporation; CULICHITOWN ONTARIO

CASE NO. **CVRI 21 051 15**

COMPLAINT FOR:

- 1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 4. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.***
- 5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.***

1 INC., a California Corporation;
2 CULICHITOWN PICO RIVERA INC., a
3 California Corporation; CULICHITOWN
4 SANTA ANA LLC, a California Limited
5 Liability Company; EMME GROUP INC., a
6 California Corporation and DOES 1-10,
7 inclusive.

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Defendants.

**6. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.***

Demand for Jury Trial

COMES NOW Plaintiff MARIO ALBERTO PORTILLO AYALA (“AYALA” or “Plaintiff”),
in a Representative capacity only, on behalf of all aggrieved employees, and alleges for his complaint
as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business
within, the State of California and the amount in controversy exceeds the statutory minimum
limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the
minimal jurisdiction limits of the Superior Court and will be established according to proof at
trial. Furthermore, there is no federal question at issue as Wage and Hour protections and
remedies related thereto are based solely on California Law and Statutes, including the Labor
Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for
purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private
Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of
California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff’s

injuries occurred in the County of Riverside, State of California.

3. Plaintiff is informed and believe and thereon allege that at all relevant times mentioned herein, Defendant CULICHITOWN RESTAURANTS, INC, was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. Defendant CULICHI LOUNGE INC., was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN BAKERSFIELD LLC, was and is a California Limited Liability Company doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN BALDWIN PARK LLC, was and is a California Limited Liability Company doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN MANAGEMENT GROUP INC., was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN MANAGEMENT GROUP INC., was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN PICO RIVERA INC., was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. CULICHITOWN SANTA ANA LLC, was and is a California Limited Liability Company doing business throughout the state, including the County of Riverside, State of California. EMME GROUP INC. was and is a California Corporation doing business throughout the state, including the County of Riverside, State of California. (These entities are collectively referred to herein as “Defendants” or “CULICHITOWN”).
4. While there are several different corporate entities, as named in the paragraph above, each holds itself out as part of one chain of “CULICHITOWN ” restaurants with standard policies and practices, as detailed below. CULICHITOWN has various locations that are currently operating throughout California. The CULICHITOWN entities have common ownership and share entity addresses, as is confirmed by the California Secretary of State's website. Each of these corporate entities (as named above) who make up CULICHITOWN are acting as

1 Plaintiff's, and all other employees', co-employers for purposes of California law.

2 5. Plaintiff is presently unaware of the true names, capacities and liability of defendants named
3 herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to
4 amend this complaint to allege their true names and capacities after the same have been
5 ascertained.

6 6. Plaintiff is informed and believes and thereon allege that each of the fictitiously named
7 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and
8 in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants,
9 and in doing the actions mentioned below, was acting within the course and scope of his or her
10 authority as such agent, servant, partner, and employee with the permission and consent of the
11 co-Defendants. Plaintiff's injuries as herein alleged were proximately caused by said
12 Defendants. Wherever it is alleged herein that any act or omission was done or committed by
13 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and do allege
14 that the same act or omission was also done and committed by each and every Defendant
15 named as a DOE, both separately and in concert with the named Defendants.

16 7. Plaintiff is informed and believes and thereon allege that Defendants, and each of them,
17 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
18 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
19 legal entities which were licensed to do and/or were doing business in the County of Riverside,
20 State of California at all times relevant to the subject matter of this action.

21 **FACTUAL BACKGROUND**

22 8. In or about July 3, 2019 Plaintiff AYALA commenced working for Defendants as a non-
23 exempt employee. He continued working for Defendants until November 27, 2020. Throughout
24 Plaintiff's employment with Defendants, Plaintiff performed his job in a capable and
25 competent manner and was commended for doing so.

26 9. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and
27 currently are, denied the benefits and protections of the Labor Code due to Defendants'
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1 institutionalized pay practices, standard as to all of Defendants' California-based non-exempt
2 employees.

3 10. On September 3, 2021, counsel for Plaintiff prepared and electronically submitted a letter to
4 the California Labor & Workforce Development Agency ("LWDA") via the California
5 Department of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed
6 to the Defendants via USPS Certified Mail. The letter contained the specific provisions of the
7 California Labor Code violated by Defendants, as well as the facts and theories in support of
8 Plaintiff's claims. (Please see **Exhibit 1**, a true and correct copy of this letter and automated
9 return receipt from the LWDA.)

10 11. The statutory time period for the LWDA to investigate and/or respond, and for the employers
11 to respond, has concluded.

12 **REPRESENTATIVE ALLEGATIONS**

13 12. As more specifically set forth below, Plaintiff brings this action in a representative capacity on
14 behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699;
15 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations
16 period, Plaintiff and all other aggrieved employees were denied the protections and benefits
17 of the Labor Code due to Defendants' standard practices. Throughout their employment,
18 Plaintiff and all other aggrieved employees were and are denied full and accurate
19 compensation, including overtime compensation, in violation of, *inter alia*, Labor Code
20 sections 510, 1194, and 1197. Plaintiff and the other aggrieved employees were and are denied
21 Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, Labor
22 Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements
23 in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff
24 and other aggrieved employees for necessary business expenditures in violation of, *inter alia*,
25 Labor Code section 2802. Defendants failed to provide all compensation due at termination
26 of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

27 13. Plaintiff brings this action on the grounds that he and other current and former aggrieved
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employees of Defendants were and are improperly denied the mandated wages resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed Four Hundred (400) members.

14. The approximately Four Hundred (400) employees are comprised of Defendants' current or former California-based non-exempt employees.

15. The questions of law and fact common to all aggrieved employees arising from Defendants' actions include, among others, the following:

- a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;
- b. Whether Defendants failed to pay its employees all compensation due and owing at termination of employment;
- c. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and 226.7, in that Defendants' written policies are not compliant with California law, and Defendants do not allow its employees duty-free breaks on occasion;
- d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in accordance with law;
- e. Whether Defendants failed to properly calculate and pay its employees overtime compensation and Meal and Rest Period Premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of all employee benefits and other non-discretionary compensation; and
- f. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of Labor Code section 2802.

16. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to,

California Labor Code section 2698 *et seq.*

17. At all times mentioned herein, Defendants are and were an “employer” as that term is used within the relevant sections of the California Labor Code.

18. Plaintiff has exhausted his administrative remedies and pre-filing requirements pursuant to California Labor Code section 2699.3, and has also fulfilled all notice requirements under the statute. (Please See **Exhibit 1**). The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded, allowing Plaintiff to proceed with formal litigation.

19. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants’ standard policies and practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 as though fully set forth herein.

21. Labor Code section 1198 states:

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

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

22. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Lab. Code § 512(a); see also I.W.C. Wage Order 5, codified as 8 Cal. Code Regs. § 11050 (11)(A).

23. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11).
24. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (12).
25. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).
26. Defendants failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, codified as Title 8, California Code of Regulations, section 11070 (7) and (11).
27. For example, Defendants do not possess a legal Meal Period policy, and make no attempt to ensure that their employees are either timely or wholly provided Meal Periods in compliance with California law. The employees would often either miss a Meal Period entirely, be provided a short or untimely Meal Period, or be provided only one Meal Period, even where they were working in excess of 10 hours a day. Defendants would pressure their employees to either skip or cut short a Meal Period to address customers or other workload concerns. Defendants routinely did not provide adequate staffing, which contributed to these meal period violations. Finally, Defendants failed to provide Meal Period penalty payments to employees on such occasions.
28. Defendants failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, and I.W.C. Wage Order 5. These violations are due, in part, to the fact that Defendants do not possess a legal Rest Period policy or practice, as its purported Rest Period policy lacks required language, including failing to provide for breaks for every four hours “*or major fraction thereof*,” resulting in employees

1 failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as
2 defined by California law. Defendants would pressure their employees to either skip or cut
3 short a Rest Period to address customers or other workload concerns. Defendants routinely did
4 not provide adequate staffing, which contributed to these Rest Period violations. Finally,
5 Defendants have never provided a Rest Period penalty payment to any employee.

6 29. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods.
7 Specifically, employees were required to be "on-call" and to respond to the employer
8 immediately and remain on the premises at all times during Meal and Rest Periods. These
9 institutional and established practices of Defendants are illegal, in that Plaintiffs and all other
10 aggrieved employees were denied proper and/or timely Meal and Rest Periods.

11 30. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one
12 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
13 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 5 (11), (12).

14 31. Any payments made by Defendants for missed or late Meal Periods or Rest Periods were not
15 paid at an employee's regular rate in violation of Labor Code section 226.7 and the operative
16 I.W.C. Wage Orders. Instead, these payments were made at an employee's base rate and did
17 not include the value of, *inter alia*, all actual compensation owed, and/or all employee benefits
18 such as, for example, non-discretionary compensation and other employee benefits.

19 32. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
20 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
21 proven at trial.

22 33. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
23 behalf of himself and all other aggrieved employees by and through Labor Code section
24 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
25 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
26 Prayer For Relief.

27 34. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendants
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pursuant to Labor Code sections 2699(a).

35. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

SECOND CAUSE OF ACTION
Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

36. Plaintiff hereby incorporates by reference paragraphs 1 through 35 as though fully set forth herein.

37. Defendants failed to provide all compensation, including minimum wage and overtime compensation, to their employees in violation of, *inter alia*, Labor Code sections 1194 and 510 and the I.W.C. Wage Orders, codified as Title 8, California Code of Regulations, section 11050 (3). This illegal action is due, in part, to Defendants' policies of **(1)** altering (and deducting) the work-time reported by its employees prior to payment, **(2)** failing to properly retain accurate Time Records, in violation of California law, and **(3)** failing to provide compensation for all time worked by the employees, or in control of the employer. Defendants would instruct Plaintiff, and other employees, to report their scheduled (as opposed to actual) work hours, resulting in a loss of compensation. Additionally, Defendants would often require Plaintiff and other employees, to work extended hours (beyond their scheduled hours and during Meal Periods), without compensation. Defendants also failed to provide all compensation for time worked before employees were on the clock, but still under Defendants' control.

38. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

39. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below

1 Prayer For Relief.

2 40. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
3 pursuant to Labor Code sections 2699(a).

4 41. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
5 section 2699(g)(1).

6 **THIRD CAUSE OF ACTION**
7 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
8 **Representative Action**
9 **(By Plaintiff against Defendants and DOES 1 through 10)**

10 42. Plaintiff hereby incorporates by reference paragraphs 1 through 41 as though fully set forth
11 herein.

12 43. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation,
13 including Overtime Compensation, due in violation of, among other statutes, Labor Code
14 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
15 whereby employees experienced monetary under-compensation on workdays where overtime
16 compensation was due pursuant to California law. Additionally, Defendants failed to calculate
17 the correct regular rate of pay for purposes of paying overtime compensation, as Defendants
18 due not include the value of non-discretionary compensation and other employee benefits when
19 determining the overtime rate of pay owed to employees. The systematic failure to provide
20 proper overtime compensation is a violation of California law.

21 44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
22 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
23 proved at trial.

24 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
25 behalf of himself and all other aggrieved employees by and through Labor Code section
26 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
27 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
28 Prayer For Relief.

1 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
2 pursuant to Labor Code sections 2699(a).

3 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 section 2699(g)(1).

5 **FOURTH CAUSE OF ACTION**
6 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
7 **Representative Action**
8 **(By Plaintiff against Defendants and DOES 1 through 10)**

9 48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth
10 herein.

11 49. Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized
12 wage statements in violation of, among other statutes, Labor Code section 226. These
13 violations include, but are not limited to, Defendants' failure to accurately identify all
14 applicable regular and overtime (including double-time) rates of pay in violation of section
15 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
16 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate," in violation of
18 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
19 in violation of Labor Code section 226(a)(2). For example, Defendants had notice of
20 employees working outside of their scheduled and/or reported hours, as well as within Meal
21 and Rest Periods, but did not provide compensation. Defendants also failed to provide an
22 accurate name and address for the legal entity that is the employer, in violation of Labor Code
23 section 226(a)(8).

24 50. Further, the Defendants' wage statement listings are confusing and employees cannot readily
25 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
26 example, Defendants are apparently using a time calculating system other than "minutes", but
27 without explanation to the employees within the wage statement.

28 51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor

Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

53. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendants pursuant to Labor Code sections 2699(a).

54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

FIFTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth herein.

56. Defendants failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Plaintiff and other non-exempt employees, including expenses for cell-phone costs, mileage and other necessary work supplies.

57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below

Prayer For Relief.

59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

60. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1).

**SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)**

61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 as though fully set forth herein.

62. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above. Additionally, Defendants failed to timely pay Plaintiff, and other aggrieved employees, all wages actually owed at the time of termination, including but not limited to, all vacation pay owed.

63. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

65. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

66. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff on behalf of all aggrieved employees, prays for judgment as follows:

- 4 1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section
5 2699(g)(1);
6 2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
7 3. For such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby request that this matter be heard and decided by trial by jury.

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11 Dated: November 8, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

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14 Eric K. Yaeckel

Ryan T. Kuhn

15 Attorneys for Plaintiff MARIO ALBERTO PORTILLO
16 AYALA, in a Representative capacity only, and on
17 behalf of other members of the general public similarly
18 situated
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EXHIBIT 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

September 3, 2021

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Mario Alberto Portillo Ayala v. Culichitown Restaurants Inc; Culichi Lounge Inc.; Culichitown Bell, Inc.; Culichitown Management Group, Inc.; Culichitown Ontario Inc; Culichitown Pico Rivera, Inc.; Emme Group Inc.; Culichitown Bakersfield LLC; Culichitown Baldwin Park LLC; Culichitown Santa Ana LLC, Emme Group, Inc.

Our File No.: 7260

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Culichitown Restaurants, Inc., Culichi Lounge Inc., Culichitown Bakersfield LLC, Culichitown Baldwin Park LLC, Culichitown Bell Inc., Culichitown Management Group Inc., Culichitown Ontario Inc., Culichitown Pico Rivera Inc., Culichitown Santa Ana LLC, and Emme Group Inc., (hereinafter “Culichitown”), in the above referenced matter. This “written notice” is filed on behalf of Mr. Ayala, and all non-exempt employees working for Culichitown. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Culichitown are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 246, 432, 510, 512, 558, 1194, 1197.1, 1198.5 and 2802, as well as IWC Wage Order 5, or any other applicable Wage Order, codified as Title 8, California Code of Regulations, section 11050 *et seq.*

///

Facts and theories supporting the allegations: Our client, Mario Alberto Portillo Ayala, worked as a non-exempt employee employed by Culichitown from June 3, 2019 through November 27, 2021.

Please Note: There are several different corporate entities each holds itself out as part of one chain of “Culichitown Restaurants” with standard ownership and policies and practices (detailed below). Culichi town has various locations currently operating throughout California. These entities have common ownership and share entity addresses, as is confirmed by the Secretary of State’s website. Each of these corporate entities (as named above) who make up Culichitown are acting as Plaintiff’s, and all other employees’, co-employers for purposes of California law.

Throughout the term of Mr. Ayala’s employment, Culichitown required Mr. Ayala and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Culichitown failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest periods, to its employees in violation of, *inter alia*, Labor Code sections 1194 and 510 and the IWC Wage Order 5, or any other applicable Wage Order. This illegal action is due, in part, to Culichitown’s policies of (1) altering (and deducting) the work-time recorded by its employees, *prior* to payment of compensation (2) failing to properly retain accurate Time Records, in violation of California law, and (3) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Culichitown would instruct Mr. Ayala to report his scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Culichitown would often require Mr. Ayala to work extended hours (beyond his scheduled hours), without compensation. Further, Culichitown would regularly contact Mr. Ayala outside of normal work hours (*i.e.*, “after hours” or during lunch) without compensation. On occasion Mr Ayala was contacted after hours to do certain tasks for his superiors because his home address was nearest in proximity to the restaruant, such as “taking down tarps” due to windy conditions at the restaurant. Mr. Ayala requested to be compensated for these occasions, but was not.
- Additionally, among other issues, Culichitown has notice of Mr. Ayala, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Further, Culichitown failed to properly calculate and pay overtime at the actual overtime rate of pay, as Culichitown ignores certain compensation when calculating the Regular Rate of Pay.
- Culichitown also failed to provide all compensation for minimum wage and overtime

worked before employees were on the clock, but still under Culichitown's control. Mr. Ayala and other non-exempt employees were often required to submit to Covid-19 health screenings/temperature checks and fill out health questionnaires everyday before work, all before being allowed to clock in for work shifts. Further, Mr. Ayala and other non-exempt employees were required to arrive early for shifts in order to prepare the kitchen for the business day, but were not allowed to clock in before their scheduled work time. Mr. Ayala was never compensated for this time.

Failure to Provide Compliant Meal Periods

- Culichitown failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5 or any other applicable Wage Order. For example, Culichitown does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon how busy or understaffed the restaurant was at the time. Often Mr. Ayala was the only cook scheduled in the kitchen for that day, requiring him to respond to customer orders during Meal Periods.
- Culichitown would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to customers and supervisors at all times. Culichitown has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated labor code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, italics added.). Even more recently, a 2020 California Supreme Court ruling stated that, "The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy 'does not excuse a section 226.7 violation.'" *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a labor code violation. Finally, Culichitown failed to pay Meal Period Premiums at the proper rate, as Culichitown fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, S259172 (Slip Op. at p.1).

- Culichitown's policy and practice would not allow its employees to "leave the premises" during Meal Periods, due to routine under-staffing and in case of sudden customer rushes.
- Finally, Culichitown required its employees to constantly monitor their cell phones in order to be "on-call" at all times, specifically during Meal Periods. On occasion, Culichitown would interrupt, or cut short, its employees Meal Periods and require them to return to work.

Failure to Provide Compliant Rest Periods

- Culichitown failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7 and IWC Wage Order 5, or any other applicable Wage Order. For example, Culichitown does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Culichitown makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Culichitown would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors at all times. Culichitown has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Culichitown would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.
- On occasion, Culichitown would interrupt, or cut short, its employees Rest Periods and require them to return to work. Mr. Ayala was denied Rest Periods on a daily basis due to chronic under-staffing issues at Culichitown, and when he and other non-exempt employees were able to take a Rest Period, it was often interrupted or cut short in order to respond to customers and supervisors.
- Culichitown illegally retained control over its employees during Rest Periods. For example, Culichitown required its employees to "remain on the premises," and to remain "On Call" (*i.e.* monitor their telephones) at all times, including during Rest Periods.

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Wage Statement Violations

- Culichitown violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Ayala and other employees were not compensated for all hours worked (due in part to Culichitown's requirement that employees list only *scheduled* work-times, not actual work-times.)
- Culichitown violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Culichitown (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Culichitown would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Culichitown violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the name and address of the legal entity that is the employer. For example, Mr. Ayala's Wage Statement ending on November 1, 2020, indicates the address of his employer, "Culichitown Restaurants Inc", as "23753 Sunnymead Blvd, Moreno Valley, CA 92553", but the California Secretary of State business search website indicates the actual entity address for "Culichitown Restaurants, Inc" as "1500 S. Millikenave, Ste. A, Ontario, CA. (See **Exhibit A**).
- Culichitown violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates, in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Ayala and the other employees were not compensated for all hours worked (due in part to Culichitown requiring employees to list only *scheduled* work-times, not actual work-times to include "on-call" hours). Additionally, and as an example, for the pay period ending November 1, 2021, Culichitown states that it paid Mr. Ayala for "77.56" and "7.65" regular and overtime hours of work respectively. (See **Exhibit A**). However, Mr. Ayala cannot "readily ascertain" what 77.56 and 7.65 means without "reference to other documents or information." In fact, Mr. Ayala cannot "readily ascertain" what these figures mean at all. This is because Culichitown is apparently using a time-calculating system other than "minutes," but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures are meant to represent. Without an explanation for how these figures were arrived at, employees cannot "readily ascertain" their total hours worked. Therefore, Culichitown failed to provide an accurate showing of the "total hours worked" by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Culichitown failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Mr. Ayala and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage. Mr. Ayala's supervisors would frequently contact him on his personal cell phone during and after work hours regarding work related matters. Mr. Ayala was never compensated for cell phone usage.

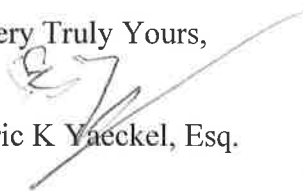
Willful Failure to Provide All Compensation to Ex-Employees

- Culichitown failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Culichitown failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above. Additionally, Culichitown failed to fully pay its employees their final wages at the termination of their employment. Mr. Ayala severed his employment with Culichitown on November 27, 2020, however did not receive his final paycheck until December 4, 2020.

To confirm, Culichitown is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,


Eric K Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

CULICHITOWN RESTAURANTS, INC

Ramon Misael Guerrero
Agent for service of Process
1500 S Millikenave Ste. A
Ontario, CA 91761

CULICHI LOUNGE INC.

Ramon Misael Guerrero
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CULICHITOWN BELL, INC.
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EMME GROUP INC
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Ontario, CA 91761

CULICITOWN SANTA ANA LLC
Edgar M. Ascencio
Agent for service of Process
2158 S. Bristol St.
Santa Ana, CA 92704

cc: Courtesy Copy and Filing Fee via U.S. Mail

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor

San Francisco, CA 94102

Exhibit A

Dr. Shirley N. Weber
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Wednesday, September 1, 2021. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C3770676 CULICHITOWN RESTAURANTS, INC

Registration Date:	03/24/2015
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC STOCK
Status:	ACTIVE
Agent for Service of Process:	RAMON MISAEL GUERRERO 1500 S MILLIKENAVE STE A ONTARIO CA 91761
Entity Address:	1500 S MILLIKENAVE STE A ONTARIO CA 91761
Entity Mailing Address:	1500 S MILLIKENAVE STE A ONTARIO CA 91761

 [Certificate of Status](#)

A Statement of Information is due EVERY year beginning five months before and through the end of March.

Document Type	↕	File Date	↕	PDF
SI-NO CHANGE		08/18/2021		
SI-COMPLETE		03/01/2018		
AGENT RESIGNED		09/04/2015		
REGISTRATION		03/24/2015		

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Frequently Asked Questions](#).

[Modify Search](#)

[New Search](#)

[Back to Search Results](#)

SEQ 001211
 Company Code
 KT / CKH 25937565 01
 Culchitown Restaurant Inc
 23753 Sunnymead Blvd
 Moreno Valley CA 92553

Earnings Statement



Period Starting: 10/19/2020
 Period Ending: 11/01/2020
 Pay Date: 11/05/2020

Taxable Marital Status: Married
 Exemptions/Allowances: Federal: 2 State: 2 Local: 0
 Social Security Number: XXX-XX-0232

Alberto Ayala
 14395 Unity Ct
 Moreno Valley, CA 92553

Earnings	rate	hours/units	this period	year to date	Other Benefits and Information	this period	year to date
Regular	16.0000	77.56	1240.96	12376.64			
Overtime	24.0000	7.65	183.60	1935.99	Total Hours Worked	35.21	1029.30

Gross Pay \$1,424.56 \$15,312.63

Statutory Deductions	this period	year to date
Federal Income	-63.61	304.21
Social Security	-88.32	949.38
Medicare	-20.65	222.03
California State Income	-23.28	123.15
California State DI	-14.25	153.13

Net Pay Adjustments this period year to date
 Misc reimbursement 69.90 69.90

Net Pay \$1,284.35

Your federal taxable wages this period are \$1,424.56
 * Excluded from Federal taxable wages

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Christian Yorke Struckmeyer](#)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, September 3, 2021 4:14:44 PM

9/3/2021

LWDA Case No. LWDA-CM-843502-21
Law Firm : Sullivan & Yaeckel Law Group APC
Plaintiff Name : Mario Alberto Portillo Ayala
Employer: Culichitown Restaurants, Inc
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm