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on behalf of himself and on behalf of all other
aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ROBERT BRITO, on behalf of himself and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

BROTHERS INTERNATIONAL DESSERTS
dba BROTHERS INTERNATIONAL
DESSERTS INC., a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2022-01242515-CU-OE-CXC

Assigned for All Purposes To:

Hon. Judge William Claster
Dept.: CX-104

**COMPLAINT FOR REPRESENTATIVE
ACTION FOR PENALTIES UNDER
PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Failure to Pay Vacation Wages
4. Failure to Comply with Labor Code § 245 *et seq.* and 246
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802;
8. Failure to Provide One Day's Rest in Seven
9. Violation of Labor Code §§ 212 and 213
10. Violation of Labor Code §§ 226(a), 1174; and
11. Violation of Labor Code §§ 203, 204

DEMAND FOR JURY TRIAL

1 Plaintiff Robert Brito (hereinafter “Plaintiff”) on behalf of himself and all other similarly
2 Aggrieved Employees complains of Defendants, and each of them, as follows:

3 **INTRODUCTION**

4 1. This is a Representative Action, pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of Plaintiff and similarly situated
6 aggrieved non-exempt employees (“Aggrieved Employees” or “Employees”) who currently
7 work or formerly worked for Defendants BROTHERS INTERNATIONAL DESSERTS dba
8 BROTHERS INTERNATIONAL DESSERTS INC., a California Corporation, and DOES 1
9 through 50 (all defendants being collectively referred to herein as “Defendants”) during the
10 liability period. From at least one (1) year prior to the filing of this action and at least one (1)
11 year prior to the date Plaintiff began the process of exhausting the administrative requirements
12 pursuant to Labor Code § 2698 *et seq.* on **October 21, 2021**, and continuing to the present (the
13 “liability period”), Defendants have had a consistent policy of failing to pay all wages due to its
14 California Employees during the course of employment and timely upon separation from
15 employment, failing to provide Employees with meal and rest periods, failing to reimburse
16 necessary business expenses, and failing to issue accurately itemized wage statements to its
17 California employees. Plaintiff alleges that Defendants, and each of them, violated various
18 provisions of the California Labor Code and relevant orders of the Industrial Welfare
19 Commission, and seeks redress for these violations.

20 2. Plaintiff is a resident of California, and during the time period relevant to this
21 Complaint, was employed by Defendants as a non-exempt hourly employee based out of
22 Defendants’ office in Irvine, California.

23 3. Upon information and belief, Plaintiff was employed by Defendants and (1)
24 shared similar job duties and responsibilities; (2) was subjected to the same policies and
25 practices; and (3) endured similar violations at the hands of Defendants as the other Aggrieved
26 Employees who served in similar and related positions.

27 4. Plaintiff and the other similarly situated Employees of Defendants consistently
28 worked at Defendants’ behest without being paid all wages due. More specifically, Defendants

1 failed to record accurate time worked, to include shift differentials, incentive pay, non-
2 discretionary and performance based bonuses and/or commissions in the regular rate used to
3 calculate and pay overtime for Plaintiff and Aggrieved Employees, failed to pay them at the
4 appropriate rates for all hours worked and requiring them to work off the clock. Additionally,
5 Defendants failed to reimburse necessary business expenses, and provided Aggrieved Employees
6 with inaccurate wage statements that prevented them from learning of these unlawful practices.
7 Defendants also failed to provide Aggrieved Employees with lawful meal and rest periods, as
8 Employees were not provided with the opportunity to take full uninterrupted and duty-free rest
9 periods and meal breaks as required by the Labor Code.

10 5. Defendant BROTHERS INTERNATIONAL DESSERTS dba BROTHERS
11 INTERNATIONAL DESSERTS INC. ("BID") is a California corporation with its principle
12 executive office in Santa Ana, California, and has been listed as the employer on the wage
13 statements issued to Plaintiff during the relevant time period. BID lists a California address in
14 Santa Ana, California with the California Secretary of State, and employs Plaintiff and the
15 Aggrieved Employees in Orange County, including at Defendants' offices and facilities in
16 Irvine, California, and throughout California and conducts business throughout California.

17 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure § 410.10. This Action is brought as a PAGA representative action on behalf of
19 similarly situated Aggrieved Employees of Defendants pursuant to California Labor Code §
20 2698 *et seq.* Venue as to Defendants is also proper in this judicial district pursuant to California
21 Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities
22 giving rise to this lawsuit occurred in the County of Orange and Defendants maintain and
23 operate facilities in Irvine, California, thus employing Plaintiff and other Aggrieved Employees
24 in Orange County and in California.

25 7. The true names and capacities, whether individual, corporate, associate, or
26 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
27 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code
28 of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants

1 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
2 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
3 this Complaint to reflect the true names and capacities of the Defendants designated herein as
4 Does 1 through 50 when their identities become known.

5 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted
6 in all respects pertinent to this action as the agent of the other Defendants, that Defendants
7 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the
8 acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants
9 acted in all respects as the employers or joint employers of Employees. Defendants, and each of
10 them, exercised control over the wages, hours or working conditions of Employees, or suffered
11 or permitted Employees to work, or engaged, thereby creating a common law employment
12 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
13 employed the Employee Aggrieved Employees.

14 **FACTUAL BACKGROUND**

15 9. Aggrieved Employees, including Plaintiff, are nonexempt employees pursuant to
16 the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt
17 positions at the direction of Defendants in the State of California. Plaintiff and the Aggrieved
18 Employees were either not paid by Defendants for all hours worked or were not paid at the
19 appropriate minimum, regular and overtime rates. Specifically, Defendants failed to pay Plaintiff
20 and the Aggrieved Employees all wages due and owing, including off the clock work, made
21 unlawful deductions from their pay, failed to provide meal and rest breaks, and failed to furnish
22 accurate wage statements, all in violation of various provisions of the California Labor Code and
23 applicable Wage Orders.

24 10. During the course of Plaintiff and the Aggrieved Employees' employment with
25 Defendants, they were not paid all wages they were owed, including for all work performed and
26 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
27 labor budgets low. Specifically, Defendants required Plaintiff and Aggrieved Employees to work
28 without compensation by going through lengthy temperature checks each day, as part of their

1 duties under Defendants' employ, for which they were never compensated, answering phone
2 calls from Defendants' employees and supervisors, and Defendants' policy of requiring the
3 Aggrieved Employees to keep their radios on throughout their meal and rest breaks to respond to
4 any emergencies or other situations that needed to be addressed.

5 11. Moreover, when the Employees did work overtime, they were not compensated
6 at the required and correct rate because Defendants failed to incorporate incentive pay they
7 received into the regular rate of pay used to calculate overtime pay. More specifically, in each
8 pay period, Employees were paid shift differentials and incentive pay and incentive bonuses
9 and/or commissions, as a separate line item on their wage statements, that were non-discretionary
10 and were tied directly to the daily or weekly performance of their jobs. However, contrary to the
11 requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not
12 incorporate the incentive bonuses and/or commissions they paid to Employees into the regular
13 rate of pay Defendants used to calculate and pay overtime to Employees. Also, to the extent that
14 the incentive payments were commissions, Defendants also failed to provide a contract in writing
15 setting forth the method by which the commissions would be computed and paid.

16 12. Moreover, Defendants paid Plaintiffs and Employees shift differentials,
17 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
18 information and belief, Defendants failed to incorporate all remunerations, including shift
19 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into
20 the calculation of the regular rate of pay for purposes of calculating sick pay. Therefore, during
21 times when Plaintiffs and Employees worked overtime and received shift differentials,
22 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
23 to pay all sick pay by paying a lower overtime rate than required.

24 13. Moreover, Defendants paid Plaintiffs and Employees shift differentials, incentive
25 pay, nondiscretionary commissions, and/or nondiscretionary bonuses. However, upon information
26 and belief, Defendants failed to incorporate all remunerations, including shift differentials,
27 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the
28 calculation of the regular rate of pay for purposes of calculating vacation pay. Therefore, during

1 times when Plaintiffs and Employees worked overtime and received shift differentials,
2 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
3 to pay all vacation pay by paying a lower overtime rate than required.

4 14. As a matter of uniform Company policy, Plaintiff and the Aggrieved Employees
5 were required to work during their meal and rest breaks which were not compensated by
6 Defendants in violation of the California Labor Code. Plaintiff and the Aggrieved Employees
7 were also not paid regular wages and overtime for the time they were required to comply with
8 other requirements imposed upon them, which they had to complete while working through their
9 meal and rest breaks and without compensation. As a result, Plaintiff and the Aggrieved
10 Employees worked shifts over eight (8) hours in a day and over forty (40) hours in a work week,
11 but they were not paid at the appropriate overtime rate for all such hours, including by being
12 required to perform work duties and tasks without pay and while off-the-clock. As a result,
13 Plaintiff and the Aggrieved Employees worked substantial overtime hours during their
14 employment with Defendants for which they were not compensated, in violation of the
15 California Labor Code, applicable IWC Wage Orders.

16 15. As a result of the the daily work demands and pressures to work through breaks,
17 and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved
18 Employees were not properly paid for all wages earned and for all wages owed to them by
19 Defendants, including when working more than eight (8) hours in any given day and/or more
20 than forty (40) hours in any given week. As a result of Defendants' unlawful policies and
21 practices, Plaintiff and Aggrieved Employees incurred overtime hours worked for which they
22 were not adequately and completely compensated. To the extent applicable, Defendants also
23 failed to pay Plaintiff and the Aggrieved Employees at an overtime rate of 1.5 times the regular
24 rate for the first eight hours of the seventh consecutive work day in a week and overtime
25 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
26 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

27 16. Therefore, from at least one (1) year prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay

1 Employees for all hours worked, and failing to pay minimum wages for all time worked, as
2 required by California law. Also, from at least one (1) year prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees overtime compensation at correctly calculated premium overtime rates for all hours
5 worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for
6 all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the
7 corresponding sections of IWC Wage Orders.

8 17. Additionally, Defendants failed to provide all the legally required unpaid, off-
9 duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other
10 Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Defendants did
11 not have a policy or practice which provided or recorded all the legally required unpaid, off-duty
12 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the
13 Aggrieved Employees. Plaintiff and Aggrieved Employees were required to perform work as
14 ordered by Defendants for more than five (5) hours during a shift, but were often required to do so
15 without receiving a meal break. In fact, as addressed above, Defendants followed a practice of
16 under-reporting hours worked in an effort to ensure that the timekeeping records for Employees
17 reflected a shift of less than six hours when in fact the Employee worked more than six hours in an
18 effort to avoid the meal period requirements under the Labor Code and applicable IWC Wage
19 Orders through an alleged meal period waiver. As a result, Defendants' failure to provide the
20 Plaintiff and Aggrieved Employees with all the legally required off-duty, unpaid meal periods and
21 all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business
22 records, or lack thereof. From at least one (1) year prior to the filing of this lawsuit and continuing
23 to the present, Defendants have regularly required Employees to work shifts in excess of five (5)
24 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
25 and shifts in excess of ten (10) hours without providing them with second meal periods of not less
26 than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of wages at
27 each Employee's effective hourly rate of pay, for each meal period that Defendants failed to
28 provide or deficiently provided.

1 18. Therefore, for at least one year prior to the filing of this action and through to the
2 present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were
3 otherwise not provided with the opportunity to take required breaks due to Defendants' policies
4 and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a
5 meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees
6 were not provided with one (1) hour's wages in lieu thereof. Meal period violations thus occurred
7 in one or more of the following manners:

- 8 (a) Aggrieved Employees were not provided full thirty-minute duty free meal
9 periods for work days in excess of five (5) hours and were not
10 compensated one (1) hour's wages in lieu thereof, all in violation of,
11 among others, Labor Code §§ 226.7, 512, and the applicable Industrial
12 Welfare Commission Wage Order(s);
- 13 (b) Aggrieved Employees were not provided second full thirty-minute duty
14 free meal periods for work days in excess of ten (10) hours;
- 15 (c) Aggrieved Employees were required to work through at least part of their
16 daily meal period(s);
- 17 (d) Meal periods were provided after five (5) hours of continuous work during
18 a shift; and
- 19 (e) Aggrieved Employees were restricted in their ability to take a full thirty-
20 minute meal period.

21 19. Plaintiff and the Defendants' Aggrieved Employees were also not authorized and
22 permitted to take lawful rest periods, were systematically required by Defendants to work through
23 or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They were
24 required to remain on-duty during breaks or portions of their breaks, thus making them either
25 untimely or shortened and on-duty, and they were also prevented from leaving the premises
26 during rest breaks under Defendants' policies. Rest period violations therefore arose in one or
27 more of the following manners:

28 ///

- 1 (a) Aggrieved Employees were required to work without being provided a
2 minimum ten (10) minute rest period for every four (4) hours or major
3 fraction thereof worked and were not compensated one (1) hour of pay at
4 their regular rate of compensation for each workday that a rest period was
5 not provided;
- 6 (b) Aggrieved Employees were not authorized and permitted to take timely
7 rest periods for every four hours worked, or major fraction thereof; and
- 8 (c) Aggrieved Employees were required to remain on-duty during rest periods
9 or otherwise had their rest periods interrupted by work demands.

10 20. From at least one (1) year prior to the filing of this lawsuit and continuing to the
11 present, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by the above described off the clock work. By
13 not compensating Employees for all hours worked, Defendant unlawfully deducted wages earned
14 by and owed to Plaintiff and the Aggrieved Employees, in violation of Labor Code § 221.

15 21. Additionally, from at least one (1) year prior to the filing of this lawsuit and
16 continuing to the present, Defendants required Plaintiff, and upon information and belief other
17 similarly situated Employees, to incur business expenses in the course of performing their
18 required job duties for Defendants. Specifically, from time to time Employees were required to
19 use their cell phones in performing their daily job duties and were not reimbursed for cell phone
20 usage for business purposes. These expenses incurred by Plaintiff and the Aggrieved Employees
21 were necessary and required of them in performing their assigned job duties, but Defendants
22 failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures,
23 thus entitling them to reimbursement according to proof as required under Labor Code § 2802
24 and the applicable provisions of the IWC Wage Orders.

25 22. As a result of these illegal policies and practices, Defendants engaged in and
26 enforced the following additional unlawful practices and policies against Plaintiff and the
27 Aggrieved Employees he seeks to represent:

- 28 a. failing to pay all wages owed to Aggrieved Employees who either were

discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;

b. failing to pay all wages owed to the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204;

c. failing to pay Aggrieved Employees all wages owed, including all meal and rest period premium wages; and

d. failing to maintain accurate records of Aggrieved Employees' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the applicable IWC Wage Orders.

23. From at least one (1) year prior to the filing of this lawsuit, and continuing to the present, Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws. More specifically, from at least one (1) year prior to the LWDA the wage statements failed to incorporate shift differentials, non-discretionary and performance based bonuses and/or commissions (incentive pay) into the regular rate of pay used to calculate and pay overtime compensation. More specifically, the wage statements also failed to account for unpaid wages and overtime due to off the clock work, namely when Employees were required to work off the clock. Additionally, the wage statements given to Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks, as discussed above. In addition, the wage statements are inaccurate and in violation of Labor Code § 226(a) because they do not reflect the proper overtime rate for overtime hours worked which should have been based on the Aggrieved Employees' regular rate of pay. This regular rate of pay should have factored in shift differentials, non-discretionary and performance based bonuses and/or commissions (incentive pay). It did not. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b).

24. From at least one (one) year prior to the filing of this lawsuit and continuing to the present, Defendants knew or should have known that Employees were entitled to one day's rest in

seven. In violation of the California Labor Code, Defendants required Employees to work more than six consecutive days without a day of rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day thereof.

25. From at least one (one) year prior to the filing of this lawsuit and continuing to the present, Defendants knew or should have known that Employees were entitled to one day's rest in seven. In violation of the California Labor Code, Defendants required Employees to work more than six consecutive days without a day of rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day thereof.

26. From at least one (1) year prior to filing this lawsuit and continuing to the present, Defendants violated Labor Code §§ 212 and 213 by issuing payment to Aggrieved Employees for their wages in a non-Labor Code-compliant instrument.

27. In light of the foregoing, Plaintiff and the Aggrieved Employees bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 and pursuant to the applicable IWC Wage Order provisions and California Code of Regulations, Title 8, section 11000 *et seq.*

PAGA NOTICE AND ALLEGATIONS

28. Plaintiff brings this PAGA representative action on behalf of himself and all others similarly situated Aggrieved Employees employed by Defendants during the liability period pursuant to Labor Code § 2698 *et seq.* Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants. Upon information and belief, at all times during the liability period, Plaintiff and the Aggrieved Employees were employees subject to the protections of the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, including IWC Wage Order No. 1-2001 regulating the wages, hours and working conditions in the Manufacturing Industry (“Wage Order No. 1”).

29. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to reimburse necessary business expenses, failing

1 to provide accurate itemized wage statements, and failing to pay Employees wages upon
2 termination or timely upon resignation, all addressed herein, Defendants failed to timely pay
3 Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204.
4 Defendants also failed to maintain records showing accurate hours worked daily and the wages
5 paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage
6 Orders.

7 30. As such, Plaintiff and the Aggrieved Employees seek wages and penalties under
8 Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under
9 Labor Code § 2699.5, which includes the penalty provisions, without limitation, based *inter alia*
10 on the following California Labor Code sections: 201, 202, 203, 204, 210, 212, 213, 226, 226.3,
11 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
12 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

13 31. More specifically, after complying with the notice procedures of Labor Code §
14 2699.3, Plaintiff asserts as a representative action on behalf of the California Attorney General and
15 the other similarly Aggrieved Employees a PAGA claim for violations of the underlying claims
16 addressed herein and seeking penalties as specified by the applicable corresponding provisions,
17 including as follows:

18 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
19 earned regular pay and minimum wages for regular hours worked and for failure to pay
20 overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a),
21 1197, and 1198, and Sections 2(K), 3(A) and 4 of the applicable IWC Wage Order(s)
22 seeking all civil and statutory penalties available and applicable, and wages, under Labor
23 Code §§ 510, 558, 1194.2, 1197.1, 2699(f)(2), and 2699.5, and also for attorneys' fees and
24 costs pursuant to Labor Code § 2699(g)(1);

25 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
26 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit
27 them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu
28 thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A) and 12(B) of

1 the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
2 applicable, and wages, under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-
3 (3), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code §
4 2699(g)(1);

5 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
6 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements
7 and failure to maintain employment records for Plaintiff and Aggrieved Employees under
8 Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable
9 IWC Wage Order(s) seeking all civil and statutory penalties and wages available and
10 applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for
11 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

12 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including
13 at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201,
14 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and
15 wages, under Labor Code §§ 201, 202, 203, 204, 210, 558, 1197, and 2699(f)(2), and
16 Section 20 of the applicable IWC Wage Order(s), and also for attorneys' fees and costs
17 pursuant to Labor Code § 2699(g)(1);

18 (e) Failure to Pay Vacation time: For Defendants paying vacation time to Aggrieved
19 Employees at a lower rate seeking all civil penalties available and applicable, and wages,
20 under the Labor Code the applicable IWC Wage Order(s), and also for attorneys' fees and
21 costs pursuant to Labor Code § 2699(g)(1);

22 (f) Failure to Reimburse Necessary Business expenses: For Defendants failing to
23 reimburse necessary business expenses, in violation of the law seeking all civil penalties
24 available and applicable, and wages, under the Labor Code the applicable IWC Wage
25 Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

26 (g) Failure to Provide One Day of Rest in Seven: For Defendants failing to provide
27 one day of Rest in Seven, in violation of the law seeking all civil penalties available and
28 applicable, and wages, under the Labor Code the applicable IWC Wage Order(s), and also

for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(h) Failure to Properly Issue Wages: For Defendants failing to issue proper payment, in violation of the law seeking all civil penalties available and applicable, and wages, under the Labor Code the applicable IWC Wage Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(i) Failure to Pay Vacation time: For Defendants paying vacation time to Aggrieved Employees at a lower rate seeking all civil penalties available and applicable, and wages, under the Labor Code the applicable IWC Wage Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(j) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

32. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

33. As also addressed above, Plaintiffs on behalf of the Aggrieved Employees also seeks the penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations

1 or civil penalties issued by the Labor Commissioner for a violation of this
2 chapter shall be the same as those set out in Section 1197.1.

3 (c) The civil penalties provided for in this section are in addition to
4 any other civil or criminal penalty provided by law.

5 34. Plaintiff has exhausted her administrative remedy by sending a certified letter to
6 the LWDA and Defendants postmarked on **October 21, 2021** addressing in detail the specific
7 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
8 to support the alleged violations. The LWDA has not provided notice of its intent to investigate
9 the alleged violations within 65 calendar days of the postmark date of the letter. As a result, as a
10 matter of law, Plaintiff is entitled to file this Complaint for full compliance and exhaustion of the
11 notice requirements under the PAGA and seeks civil penalty assessments against Defendants as a
12 Representative of the State of California as hereinafter alleged and in accordance with the law, in
13 addition to costs and reasonable attorneys' fees as provided by the PAGA statute. A true and
14 correct copy of the **October 21, 2021** Notice to the LWDA and the Defendants is attached hereto
15 **Exhibit A** and is expressly incorporated into this Complaint as if set forth in full. Plaintiff alleges
16 that the notice period provided by statute has expired and amendment is proper pursuant to Labor
17 Code § 2699.3(a)(2)(C).

18 35. This action has been brought and may properly be maintained as a representative
19 action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties and
20 wages based, *inter alia*, on the following claims addressed in detail herein:

- 21 a. Defendants failed to pay Employees minimum wages and wages for all hours
22 worked;
- 23 b. Defendants failed to pay Employees overtime as required under Labor Code § 510;
- 24 c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage
25 Orders, by failing to provide Employees with requisite meal periods or premium
26 pay in lieu thereof;
- 27 d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders,
28 by failing to authorize and permit Employees to take requisite rest breaks or

provide premium pay in lieu thereof;

- e. Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- f. Defendants violated Labor Code § 221 by making unauthorized deductions from wages;
- g. Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;
- h. Defendants violated Labor Code §§ 551, 552, and 558 by failing to provide one day of rest in seven;
- i. Defendants violated Labor Code §§ 212 and 213 by issuing Aggrieved Employees for their wages in a non-Labor Code-compliant instrument;
- j. Defendants failed to pay Employees sick pay as required under Labor Code § 245;
- k. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- l. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Aggrieved Employees' earned wages and work periods;
- m. Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- n. Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly; and
- o. Defendants failed to reimburse necessary business expenses incurred by Employees in connection with performing their job duties under Labor Code § 2802.

FIRST CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

36. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

1 37. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of misstating Employees time records and failing to pay
3 Employees for all hours worked. Employees would work hours and not receive wages, including
4 as alleged above in connection with working during meal breaks, requiring employees to
5 consistently work without compensation by going through lengthy temperature checks each day,
6 as part of their duties under Defendants' employ, for which they were never compensated,
7 answering phone calls from Defendants' employees and supervisors, and Defendants' policy of
8 requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks
9 to respond to any emergencies or other situations that needed to be addressed. Additionally,
10 Defendants had a consistent policy of failing to pay Employees for hours worked during alleged
11 meal periods for which Employees were consistently denied, as also addressed herein.
12 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
13 applicable to Aggrieved Employees, as a result of implementing a uniform policy and practice
14 that denied accurate compensation to Plaintiff and the other members of the Aggrieved
15 Employees as to minimum wage pay.

16 38. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil
17 penalties and remedies for each Aggrieved Employee for each pay period in the applicable
18 statute of limitations in which the Aggrieved Employee was not paid for all hours worked for
19 each pay period, plus reasonable attorneys' fees and costs.

20 39. The Private Attorneys General Act of 2004 ("PAGA") provides that:
21 ... an aggrieved employee may recover the civil penalty described in
22 subdivision (I) in a civil action pursuant to the procedures specified in
23 Section 2699.3 filed on behalf of himself or herself and other current or
24 former employees against whom one or more of the alleged violations was
25 committed. Any employee who prevails in any action shall be entitled to
26 an award of reasonable attorney's fees and costs. Nothing in this part shall
operate to limit an employee's right to pursue or recover other remedies
available under state or federal law, either separately or concurrently with
an action taken under this part.

27 California Labor Code § 2699(g)(1).

28 40. Plaintiff is an "aggrieved employee" under the PAGA, as he was employed by

Defendants during the applicable statutory period and suffered one or more of the California Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former aggrieved non-exempt employees, as defined above, the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

41. Plaintiff, by virtue of the Notice correspondence dated **October 21, 2021**, attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, including without limitation, the penalty provisions identified in California Labor Code § 2699.5. Because the LWDA took no steps within the applicable time period required to intervene, and because Defendants took no corrective actions to remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of California, will seek, and hereby does seek, any and all civil penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE").

42. Any civil penalties recovered herein will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the LWDA, where applicable. See Labor Code § 2699(i).

43. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the policies, practices and business acts of Defendants to the extent provided by law as a Representative Action, including reasonable attorneys' fees and costs, and underpayment of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Labor Code § 558 provides in pertinent part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee....

1 (c) The civil penalties provided for in this section are in addition to
2 any other civil or criminal penalty provided by law.

3 44. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
4 and other aggrieved non-exempt employees proper regular pay and minimum wages for regular
5 hours worked and/or overtime premium pay for overtime hours worked during the applicable
6 statutory period.

7 45. Section 4 of IWC Wage Order No. 1 provides in pertinent part: “(A) Every
8 employer shall pay to each employee wages not less than the following: (1) Any employer who
9 employs 26 or more employees shall pay to each employee wages not less than the following:
10 (a) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2017;
11 (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018; (c) Twelve
12 dollars (\$12.00) per hour for all hours worked, effective January 1, 2019;.... (B) Every employer
13 shall pay to each employee, on the established payday for the period involved, not less than the
14 applicable minimum wage for all hours worked in the payroll period, whether the remuneration
15 is measured by time, piece, commission, or otherwise.”

16 46. Section 2(K) of IWC Wage Order No. 1 defines “Hours worked” as “the time
17 during which an employee is subject to the control of an employer, and includes all the time the
18 employee is suffered or permitted to work, whether or not required to do so.”

19 47. In California, employees must be paid at least the then applicable state minimum
20 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
21 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
22 timely pay its employees for all hours worked. Defendants failed to do so.

23 48. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
24 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
25 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

26 49. The minimum wage provisions of California Labor Code are enforceable by
27 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
28 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage

1 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
2 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
3 including interest thereon, reasonable attorney's fees and costs of suit."

4 50. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
5 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
6 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
7 Orders, entitle non-exempt employees to an amount equal to or greater than the minimum wage
8 for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this
9 rate may be used as a credit against a minimum wage obligation.

10 51. In committing these violations of the California Labor Code, Defendants
11 inaccurately recorded, or calculated the correct time worked and consequently underpaid the
12 actual time worked by Plaintiff and other Aggrieved Employees. Defendants acted in an illegal
13 attempt to avoid the payment of all earned wages, and other benefits in violation of the
14 California Labor Code, the Industrial Welfare Commission requirements and other applicable
15 laws and regulations. As a result of these violations, Defendant also failed to timely pay all
16 wages earned in accordance with California Labor Code § 1194.

17 52. California Labor Code § 1194.2 also provides for the following remedies: "In any
18 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
19 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

21 53. In addition to restitution for all unpaid wages, pursuant to California Labor Code
22 § 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
23 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
24 failure to pay each employee minimum wages.

25 54. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
26 are further entitled to recover liquidated damages in an amount equal to wages unlawfully
27 unpaid and interest thereon.

28 55. Labor Code § 1198 also requires that: "The maximum hours of work and the

1 standard conditions of labor fixed by the commission shall be the maximum hours of work and
2 the standard conditions of labor for employees. The employment of any employee for longer
3 hours than those fixed by the order or under conditions of labor prohibited by the order is
4 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
5 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
6 of the provisions for which a representative PAGA action may be commenced under Labor Code
7 § 2699.3.

8 56. Additionally, Labor Code § 1199 provides that: “Every employer or other person
9 acting either individually or as an officer, agent, or employee of another person is guilty of a
10 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who
11 does any of the following: (a) Requires or causes any employee to work for longer hours than
12 those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or
13 causes to be paid to any employee a wage less than the minimum fixed by an order of the
14 commission....”

15 57. Similarly, Section 20 of IWC Wage Order No. 1 addresses further penalties as
16 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
17 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
18 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
19 underpaid employee for each pay period during which the employee was underpaid in addition
20 to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
21 for each underpaid employee for each pay period during which the employee was underpaid in
22 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee
23 shall receive payment of all wages recovered.”

24 58. Additionally, Plaintiff and the Aggrieved Employees were required to endure
25 unlawful deductions from their wages, as set forth above in connection with off the clock work.
26 Labor Code § 221 instructs that: “It shall be unlawful for any employer to collect or receive from
27 an employee any part of wages theretofore paid by said employer to said employee.” These
28 unlawful deductions equate to additional unpaid wage violations giving rise to PAGA penalties,

1 and Labor Code § 221 is an enumerated provision under Labor Code § 2699.5.

2 59. Defendants have the ability to pay minimum wages for all time worked and have
3 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
4 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

5 60. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
6 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
7 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
8 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each
10 aggrieved employee per pay period for each subsequent violation.”

11 61. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
12 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
13 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
14 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
15 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
16 204,... 221, ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the
17 Code allow for recovery of civil penalties pursuant to the PAGA in this action.

18 62. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
19 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
20 employees applicable minimum wages and contractually agreed upon wages for all hours they
21 were required to work and remain under Defendants’ control.

22 63. As a direct and proximate result of the Defendants’ unlawful acts, as alleged in
23 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
24 continue to be deprived, of minimum wages and all wages owed for all hours they worked.

25 64. As such, Defendants are liable for PAGA penalties resulting from their failure to
26 provide Plaintiff and the other Aggrieved Employees minimum wages and all wages owed for
27 all hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
28 representative action, all civil and statutory penalties authorized for violations of California

1 Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections 2(G), 4, and 20 of the
2 applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and
3 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
4 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

5 65. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3.
6 For the purposes of this cause of action, recovery of civil penalties will include the recovery of
7 underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and
8 subject to Court approval.

9 **SECOND CAUSE OF ACTION**

10 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND**

11 **OVERTIME UNDER LABOR CODE § 510**

12 **(Against All Defendants)**

13 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
14 in full herein.

15 67. California Labor Code § 1194 provides that "any employee receiving less than
16 the legal minimum wage or the legal overtime compensation applicable to the employee is
17 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
18 or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
19 suit." The action may be maintained directly against the employer in an employee's name
20 without first filing a claim with the Division of Labor Standards and Enforcement.

21 68. By their conduct, as set forth herein, Defendants violated California Labor Code
22 § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay
23 Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight
24 (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8)
25 hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of
26 pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in
27 excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a
28 consistent policy of not paying Employees wages for all hours worked, including by requiring

1 off the clock work, and by failing to incorporate the incentive bonuses and/or commissions paid
2 to the Employees into the regular rate used to calculate the wage rate, and overtime wage rate by
3 under-reporting actual hours worked, as addressed above.

4 69. Similar to Labor Code § 510, Section 3(A) of IWC Wage Order No. 1 also
5 provides: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are
6 applicable to employees 18 years of age or over... Such employees shall not be employed more
7 than eight (8) hours in any workday or more than 40 in any workweek unless the employee
8 receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked
9 over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
10 beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible
11 provided the employee is compensated for such overtime at not less than: (a) One and one-half
12 (11/2) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours
13 up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked
14 on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee’s
15 regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours
16 worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a
17 workweek...”

18 70. Defendants had a consistent policy of violating these provisions by not paying
19 Employees wages for all hours worked, including requiring off the clock work as addressed and
20 under-reporting actual hours worked. Specifically, Defendants required Plaintiff and Aggrieved
21 Employees to work without compensation by going through lengthy temperature checks each day,
22 as part of their duties under Defendants’ employ, for which they were never compensated,
23 answering phone calls from Defendants’ employees and supervisors, and Defendants’ policy of
24 requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks
25 to respond to any emergencies or other situations that needed to be addressed. Defendants also
26 paid shift differentials, incentive pay, non-discretionary and performance based bonuses and/or
27 commissions to Employees, but failed to correctly calculate the regular rate of pay used to pay
28 overtime wages to Plaintiff and the Aggrieved Employees as alleged in the **October 21, 2021**

1 Notice to the LWDA.

2 71. Defendants had a consistent policy of violating these provisions by not paying
3 Employees wages for all hours worked, including requiring off the clock work and under-
4 reporting actual hours worked.

5 72. Defendants, and each of them, have intentionally and improperly required
6 Plaintiff and the Aggrieved Employees to do so, or otherwise caused them to work off the clock
7 to avoid paying Plaintiff and the Aggrieved Employees all earned and owed straight time and
8 overtime and double time wages and other benefits, in violation of the California Labor Code,
9 the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the
10 Division of Labor Standards and Enforcement. Defendants have also violated these provisions
11 by requiring Plaintiff and other similarly situated non-exempt employees to work through meal
12 periods when they were required to be clocked out or to otherwise work off the clock to
13 complete their daily job duties. Moreover, Defendants required Plaintiff and Aggrieved
14 Employees to work without compensation by going through lengthy temperature checks each
15 day, as part of their duties under Defendants' employ, for which they were never compensated,
16 answering phone calls from Defendants' employees and supervisors, and Defendants' policy of
17 requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks
18 to respond to any emergencies or other situations that needed to be addressed. Therefore,
19 Employees were not properly compensated, nor were they paid overtime rates for hours worked
20 in excess of eight hours in a given day, and/or forty hours in a given week. Based on information
21 and belief, Defendants did not make available to Employees a reasonable protocol for correcting
22 time records when Employees worked overtime hours or to fix incorrect time entries.

23 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
24 Aggrieved Employees to work through meal periods when they were required to be clocked out
25 or to otherwise work off the clock to complete their daily job duties, and by failing to
26 incorporate shift differentials, incentive pay, non-discretionary bonuses and/or commissions into
27 the regular rate used by Defendants to calculate and pay overtime compensation as alleged in the
28 **October 21, 2021** Notice to the LWDA.

1 73. Defendants' failure to pay Plaintiff and the Aggrieved Employees the unpaid
2 balance of regular wages owed and overtime compensation, as required by California law,
3 violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

4 74. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil
5 penalties and remedies for each Aggrieved Employee for each pay period in the applicable
6 statute of limitations in which the Aggrieved Employee was not paid at the correct overtime rate
7 for all hours worked for each pay period, plus reasonable attorneys' fees and costs.

8 75. The Private Attorneys General Act of 2004 ("PAGA") provides that:

9 ... an aggrieved employee may recover the civil penalty described in
10 subdivision (I) in a civil action pursuant to the procedures specified in
11 Section 2699.3 filed on behalf of himself or herself and other current or
12 former employees against whom one or more of the alleged violations was
13 committed. Any employee who prevails in any action shall be entitled to
14 an award of reasonable attorney's fees and costs. Nothing in this part shall
operate to limit an employee's right to pursue or recover other remedies
available under state or federal law, either separately or concurrently with
an action taken under this part.

15 California Labor Code § 2699(g)(1).

16 76. Plaintiff is an "aggrieved employee" under the PAGA, as he was employed by
17 Defendants during the applicable statutory period and suffered one or more of the California
18 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
19 herself and all other current and former aggrieved non-exempt employees, as defined above, the
20 civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

21 77. Plaintiff, by virtue of the Notice correspondence dated **October 21, 2021**,
22 attached hereto as **Exhibit A**, has satisfied all prerequisites to serve as a representative of the
23 general public to enforce California's labor laws, including without limitation, the penalty
24 provisions identified in California Labor Code § 2699.5. Because the LWDA took no steps
25 within the applicable time period required to intervene, and because Defendants took no
26 corrective actions to remedy the allegations set forth above, Plaintiff, as a representative of the
27 people of the State of California, will seek, and hereby does seek, any and all civil penalties
28 otherwise capable of being collected by the Labor Commission and/or the Department of Labor

Standards Enforcement (“DLSE”).

78. Any civil penalties recovered herein will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the LWDA, where applicable. See Labor Code § 2699(i).

79. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the policies, practices and business acts of Defendants to the extent provided by law as a Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Labor Code § 558 provides in pertinent part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee....

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

80. Section 2(G) of IWC Wage Order No. 1 defines “Hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

81. In California, employees must be paid at least the then applicable state minimum wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so. Defendants’ failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. During the liability period, Defendants have failed to pay all wages and overtime compensation earned by Aggrieved Employees, and each such failure to make a timely payment of compensation to Employees

1 constitutes a separate violation of California Labor Code § 204.

2 82. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
3 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
4 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

5 83. The minimum wage provisions of California Labor Code are enforceable by
6 private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any
7 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage
8 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
9 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
10 including interest thereon, reasonable attorney’s fees and costs of suit.”

11 84. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage
15 for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this
16 rate may be used as a credit against a minimum wage obligation.

17 85. In committing the above addressed violations of the California Labor Code,
18 Defendants inaccurately recorded, or required Plaintiff and the Aggrieved Employees to input
19 times that did not reflect their actual hours worked, or calculated the incorrect time worked and
20 consequently underpaid the actual time worked by Plaintiff and other Aggrieved Employees.
21 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other
22 benefits in violation of the California Labor Code, the Industrial Welfare Commission
23 requirements and other applicable laws and regulations. As a result of these violations,
24 Defendant also failed to timely pay all wages earned in accordance with California Labor Code §
25 1194.

26 86. California Labor Code § 1194.2 also provides for the following remedies: “In any
27 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
28 minimum wages fixed by an order of the commission, an employee shall be entitled to recover

1 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

2 87. In addition to restitution for all unpaid wages, pursuant to California Labor Code
3 § 1197.1, Plaintiff and Aggrieved Employees are entitled to recover a penalty of \$100.00 for the
4 initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent
5 failure to pay each employee minimum wages.

6 88. Pursuant to California Labor Code § 1194.2, Plaintiff and Aggrieved Employees
7 are further entitled to recover liquidated damages in an amount equal to wages unlawfully
8 unpaid and interest thereon.

9 89. Labor Code § 1198 also requires that: “The maximum hours of work and the
10 standard conditions of labor fixed by the commission shall be the maximum hours of work and
11 the standard conditions of labor for employees. The employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is
13 unlawful.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for
14 violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one
15 of the provisions for which a representative PAGA action may be commenced under Labor Code
16 § 2699.3.

17 90. Additionally, Labor Code § 1199 provides that: “Every employer or other person
18 acting either individually or as an officer, agent, or employee of another person is guilty of a
19 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who
20 does any of the following: (a) Requires or causes any employee to work for longer hours than
21 those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or
22 causes to be paid to any employee a wage less than the minimum fixed by an order of the
23 commission....”

24 91. Similarly, Section 20 of IWC Wage Order No. 1 addresses further penalties as
25 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
26 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
27 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
28 underpaid employee for each pay period during which the employee was underpaid in addition

1 to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
2 for each underpaid employee for each pay period during which the employee was underpaid in
3 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee
4 shall receive payment of all wages recovered.”

5 92. Defendants have the ability to pay overtime wages for all time worked and have
6 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
7 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

8 93. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
9 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
10 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
11 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
12 employee per pay period for the initial violation and two hundred dollars (\$200) for each
13 aggrieved employee per pay period for each subsequent violation.”

14 94. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
15 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
16 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
17 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of
18 Section 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§]
19 204,...510, 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that
20 allow for recovery of civil penalties pursuant to the PAGA.

21 95. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
22 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
23 employees applicable minimum wages and contractually agreed upon wages for all hours they
24 were required to work and remain under Defendants’ control.

25 96. As a direct and proximate result of the Defendants’ unlawful acts, as alleged in
26 detail herein, Plaintiff and other aggrieved non-exempt employees have been deprived, and
27 continue to be deprived, of overtime wages owed for all hours they worked.

28 97. As such, Defendants are liable for PAGA penalties resulting from their failure to

1 timely provide Plaintiff and the other Aggrieved Employees overtime and premium wages for all
2 hours worked. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
3 representative action, all civil and statutory penalties authorized for violations of California
4 Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(G), 4, and 20 of the
5 applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and
6 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
7 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

8 98. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3.
9 For the purposes of this cause of action, recovery of civil penalties will include the recovery of
10 underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and
11 subject to Court approval.

12 **THIRD CAUSE OF ACTION**
13 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY VACATION WAGES**
14 **(Against All Defendants)**

15 99. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
16 in full herein.

17 100. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
18 employment policy provides for paid vacation and an employee is terminated without having
19 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
20 in accordance with said contract of employment or policy respecting eligibility or time served.

21 101. Defendants paid shift differentials, nondiscretionary commissions, incentive pay,
22 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
23 remuneration in the regular rate of pay upon which vacation wages were calculated and paid

24 102. Accordingly, Plaintiff entitled to recover, and hereby seeks through this
25 representative action, all civil and statutory penalties authorized for violations of California Labor
26 Code and the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties
27 available and applicable, and wages, and also attorneys' fees and costs pursuant to Labor Code §
28 2699(g)(1).

1 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, an employer may not employ
2 someone for a shift of more than five (5) hours without providing him or her with a meal period of
3 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
4 her with a second meal period of not less than thirty (30) minutes.

5 109. Similar to Labor Code § 512, Section 11(A)-(D) of Wage Order No. 1 provides
6 that: “(A) No employer shall employ any person for a work period of more than five (5) hours
7 without a meal period of not less than 30 minutes, except that when a work period of not more
8 than six (6) hours will complete the day’s work the meal period may be waived by mutual consent
9 of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute
10 meal period, the meal period shall be considered an “on duty” meal period and counted as time
11 worked.... (B) If an employer fails to provide an employee a meal period in accordance with the
12 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
13 employee’s regular rate of compensation for each work day that the meal period is not
14 provided....”

15 110. Defendants failed to provide Employees with meal periods as required under the
16 Labor Code. Employees were often required to work or to otherwise remain under Defendants’
17 control during meal periods, or Defendants provided them after Employees worked beyond the
18 fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work
19 demands and requirements. Furthermore, upon information and belief, on the occasions when
20 Employees worked more than ten (10) hours in a given shift, they did so without receiving a
21 second uninterrupted thirty (30) minute meal period, as required by law.

22 111. Defendants thus failed to provide Plaintiff and the Aggrieved Employees with
23 meal periods as required by the Labor Code, including by not providing them with the opportunity
24 to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring
25 them to perform work during breaks.

26 112. Moreover, Defendants failed to compensate Employees for each meal period not
27 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
28 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a

1 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
2 pay at the employee's regular rate of compensation for each workday that the meal period is not
3 provided. Defendants failed to compensate Employees for each meal period not provided or
4 inadequately provided, as required under Labor Code § 226.7. Additionally, as detailed above,
5 when Defendants did pay meal period premiums, they did so at the Employees' standard rate of
6 pay without factoring in all forms of remuneration/compensation including shift differentials,
7 nondiscretionary bonuses or by otherwise incorrectly calculating the regular rate.

8 113. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
9 and other aggrieved non-exempt employees lawful off-duty unpaid meal periods, as well as
10 corresponding premium pay for denied meal periods, during the applicable statutory period.

11 114. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from
12 the policies, practices and business acts of Defendants to the extent provided by law as a
13 Representative Action, including reasonable attorneys' fees and costs, and underpayment of
14 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
15 Labor Code § 558 provides in pertinent part:

16 (a) Any employer or other person acting on behalf of an employer
17 who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial
19 Welfare Commission shall be subject to a civil penalty as follows: (1) For
20 any initial violation, fifty dollars (\$50) for each underpaid employee for
21 each pay period for which the employee was underpaid in addition to an
22 amount sufficient to recover underpaid wages. (2) For each subsequent
violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee....

23 (c) The civil penalties provided for in this section are in addition to
24 any other civil or criminal penalty provided by law.

25 115. Section 2(K) of IWC Wage Order No. 1 defines "Hours worked" as "the time
26 during which an employee is subject to the control of an employer, and includes all the time the
27 employee is suffered or permitted to work, whether or not required to do so."

28 116. Labor Code § 1198 also requires that: "The maximum hours of work and the

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

4 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
5 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
6 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

7 117. Premium pay for denied lawful meal and rest periods is considered a “wage”
8 rather than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

9 118. Specifically, Plaintiff seeks to recover civil penalties pursuant to the PAGA that
10 arise from the policies, practices, and business acts of Defendants to the extent provided by law as
11 a Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
12 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

13 119. Upon information and belief, Plaintiff and other aggrieved non-exempt
14 employees did not enter into legally binding written agreements with Defendants agreeing to “on-
15 duty” meal periods, or waiving “off duty” meal periods. Nor does the nature of their work prevent
16 the Aggrieved Employees from being relieved of all duties during meal periods. To the contrary.
17 Any inability to take uninterrupted off-duty meal periods was, and is, attributable solely to
18 Defendants’ own insufficient staffing models, rather than the general nature of the work performed
19 by Plaintiff and other Aggrieved Employees.

20 120. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
21 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
22 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
23 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation.”

26 121. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
27 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
28 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,

1 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
2 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,
3 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
4 penalties pursuant to the PAGA.

5 122. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
6 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
7 employees with lawful uninterrupted off-duty meal periods throughout the applicable statutory
8 period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper
9 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were
10 denied an unpaid, off-duty 30-minute meal period.

11 123. As such, Defendants are liable for PAGA penalties resulting from their failure to
12 provide Plaintiff and other aggrieved non-exempt employees lawful meal periods and the
13 corresponding meal period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby
14 seeks through this Representative Action, all civil and statutory penalties authorized for violations
15 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 11(A)-(D) of the applicable
16 IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable
17 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also
18 for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

19 124. Aggrieved employees may recover penalties for denied meal periods under the
20 PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating
21 hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in
22 Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will
23 therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3),
24 in an amount according to proof and subject to Court approval.

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1 **SIXTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY UNDER**

3 **LABOR CODE §§ 226.7, 512**

4 **(Against All Defendants)**

5 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
6 in full herein.

7 126. Section 12(A)-(B) of IWC Wage Order No. 1 instructs that: “(A) Every
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period. The authorized rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
11 or major fraction thereof. However, a rest period need not be authorized for employees whose total
12 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be
13 counted as hours worked for which there shall be no deduction from wages. (B) If an employer
14 fails to provide an employee a rest period in accordance with the applicable provisions of this
15 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
16 compensation for each work day that the rest period is not provided.”

17 127. Labor Code § 226.7 further instructs that: “(b) An employer shall not require an
18 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission,... (c) If
20 an employer fails to provide an employee a meal or rest or recovery period in accordance with a
21 state law,... the employer shall pay the employee one additional hour of pay at the employee’s
22 regular rate of compensation for each workday that the meal or rest or recovery period is not
23 provided. (d) A rest or recovery period mandated pursuant to a state law,... shall be counted as
24 hours worked, for which there shall be no deduction from wages....”

25 128. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders thus
26 provide that employers must authorize and permit all employees to take rest periods at the rate of
27 ten (10) minutes net rest time per four (4) work hours.

28 129. Employees consistently worked consecutive four (4) hour shifts and were

generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided untimely as a result of the above described off the clock work. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiff and the Aggrieved Employees in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders. Additionally, as detailed above, when Defendants did pay meal period premiums, they did so at the Employees' standard rate of pay without factoring in all forms of remuneration/compensation including shift differentials, incentive pay, nondiscretionary bonuses or by otherwise incorrectly calculating the regular rate.

130. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the policies, practices and business acts of Defendants to the extent provided by law as a Representative Action, including reasonable attorneys' fees and costs, and underpayment of wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Labor Code § 558 provides in pertinent part:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee....

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

131. Section 2(G) of IWC Wage Order No. 4 defines "Hours worked" as "the time

1 during which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.”

3 132. Labor Code § 1198 also requires that: “The maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees. The employment of any employee for longer hours
6 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
7 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
8 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
9 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

10 133. Premium pay for denied lawful meal and rest periods is considered a “wage”
11 rather than a penalty. *See Murphy v. Kennefth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114.

12 134. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
13 policies, practices, and business acts of Defendants to the extent provided by law as a
14 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages
15 as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

16 135. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
17 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
18 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
19 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
20 employee per pay period for the initial violation and two hundred dollars (\$200) for each
21 aggrieved employee per pay period for each subsequent violation.”

22 136. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
23 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
24 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
25 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
26 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 226.7,
27 ...512,...558,... and 1198” among the provisions of the Code that allow for recovery of civil
28 penalties pursuant to the PAGA.

137. Defendants' conduct, as alleged herein, violates the aforementioned regulations because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt employees with lawful uninterrupted off-duty, net ten-minute rest periods throughout the applicable statutory period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were denied one of their lawfully entitled rest periods.

138. As such, Defendants are liable for PAGA penalties resulting from their failure to provide Plaintiff and other aggrieved non-exempt employees lawful rest periods and the corresponding rest period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 12(A)-(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

139. Aggrieved employees may recover penalties for denied rest periods under the PAGA, as the civil penalty under California Labor Code 558 applies to any provision regulating hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

SEVENTH CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE NECESSARY

BUSINESS EXPENSES UNDER LABOR CODE § 2802

(Against All Defendants)

140. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

141. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Aggrieved Employees to pay for

1 necessary work related expenses they incurred in performing their daily job duties, as addressed
2 above, and such expenses were necessary for performing those duties. Specifically, Plaintiff and
3 the Aggrieved Employees were required to use their cell phones phone in performing their daily
4 job duties and were not reimbursed for the cost of cell phone usage. Plaintiff and the Aggrieved
5 Employees were not reimbursed for those lawful and necessary work related expenses or losses
6 incurred in direct discharge of their job duties during employment with Defendants and at the
7 direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage
8 Orders, paragraph 9.

9 142. Labor Code § 2802 provides that: “(a) An employer shall indemnify his or her
10 employee for all necessary expenditures or losses incurred by the employee in direct consequence
11 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,...
12 (b) All awards made by a court or by the Division of Labor Standards Enforcement for
13 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
14 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
15 necessary expenditure or loss. (c) For purposes of this section, the term “necessary expenditures or
16 losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by
17 the employee enforcing the rights granted by this section....”

18 143. Defendants’ knowing and willful failure to reimburse lawful necessary work
19 related expenses and losses to Plaintiff and the Aggrieved Employees resulted in damages and
20 loses because, among other things, Defendants did not inform employees of their right to be
21 reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff
22 and the Aggrieved Employees with regard to their rights, Plaintiff and the Aggrieved Employees
23 were led to believe that incurring those lawful and necessary expenses was an expected and
24 essential function of their employment with Defendants and that failure to incur those expenses
25 would have adverse consequences on their employment.

26 144. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs

1 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation and two hundred dollars (\$200) for each
3 aggrieved employee per pay period for each subsequent violation.”

4 145. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
5 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
6 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
7 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
8 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 2802...”
9 among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

10 146. As such, Defendants are liable for PAGA penalties resulting from their failure to
11 reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly,
12 Plaintiff is entitled to recover, and hereby seeks through this Representative Action, all civil and
13 statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and
14 Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory
15 penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys’
16 fees and costs pursuant to Labor Code § 2699(g)(1).

17 **EIGHTH CAUSE OF ACTION**

18 **PENALTIES UNDER THE PAGA FOR VIOLATION OF LABOR CODE §§ 551, 552, and**
19 **558 FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**
20 **(Against All Defendants)**

21 147. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
22 in full herein.

23 148. At all relevant times herein, Labor Code § 551 provides that every person
24 employed in any occupation of labor is entitled to one day's rest in seven. Additionally, Labor
25 Code § 552 prohibits employers from requiring employees to work more than six consecutive
26 days without a day of rest.

27 149. At all relevant times herein set forth, Labor Code § 556 exempts an employer
28 from the day-of-rest requirement when the total hours worked by an employee do not exceed 30

1 hours in any week or six hours in any one day thereof.

2 150. Labor Code § 558(a) provides “[a]ny employer or other person acting on behalf
3 of an employer who violates, or causes to be violated, a section of this chapter or any provision
4 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
5 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
6 underpaid employee for each pay period for which the employee was underpaid.... (2) For each
7 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
8 period for which the employee was underpaid....” Labor Code § 558(c) provides “[t]he civil
9 penalties provided for in this section are in addition to any other civil or criminal penalty
10 provided by law.”

11 151. During the relevant time period, on information and belief, Defendants
12 sometimes scheduled Aggrieved Employees to work six (6) or more hours per day and more
13 than seven (7) consecutive days in a workweek. Because Aggrieved Employees worked over 30
14 hours per week and over six (6) hours per day in a workweek, they were not exempt from the
15 day-of-rest requirement. To the extent that Aggrieved Employees may have signed purported
16 waivers of their right to a day's rest in seven, such waivers are invalid.

17 152. Thus, during the relevant time period, and in violation of Labor Code § 551 and
18 552, Defendants willfully caused Aggrieved Employees to work more than six days in seven.
19 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code §
20 558.

21 153. Defendants are liable for PAGA penalties resulting from their failure to provide
22 one day's rest in seven. Accordingly, Plaintiff is entitled to recover, and hereby seeks through
23 this Representative Action, all civil and statutory penalties authorized for violations of
24 California Labor Code §§ 551, 552 and 558, and Plaintiff seeks all civil and statutory penalties
25 available and applicable under Labor Code, and also attorneys' fees and costs pursuant to Labor
26 Code § 2699(g)(1).

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1 **NINTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PAGA FOR VIOLATION OF LABOR CODE §§ 212 AND 213**
3 **(Against All Defendants)**

4 154. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
5 in full herein.

6 155. California Labor Code § 212 requires California employers to comply with a
7 series of provisions when issuing wages to employees. In short, the provisions of Labor Code §
8 212(a)(1) forbids an employer from issuing payment of wages in an instrument that is not (1)
9 negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place
10 of business in the State, (6) the name and address of which appears on the instrument, and (7)
11 which place of business has been prepared, by the deposit of funds, the establishment of credit,
12 or by some arrangement or understanding, to pay the money called for by the instrument.

13 156. Labor Code § 213 prohibits an employer from depositing wages due or to become
14 due or an advance on wages to be earned in an account in any bank, savings and loan
15 association, or credit union of the employee's choice with a place of business located in this
16 state, provided that the employee has voluntarily authorized that deposit. If an employer
17 discharges an employee or the employee quits, the employer may pay the wages earned and
18 unpaid at the time the employee.

19 157. Defendants violated Labor Code §§ 212 and 213 by issuing payment to
20 Aggrieved Employees for their wages in a non-Labor Code-compliant instrument as Defendants
21 would issue store gift cards to Aggrieved Employees to be included as a form of compensation
22 for overtime payments as described above.

23 158. Defendants are liable for PAGA penalties resulting from their failure to properly
24 pay Aggrieved Employees. Accordingly, Plaintiff is entitled to recover, and hereby seeks
25 through this Representative Action, all civil and statutory penalties authorized for violations of
26 California Labor Code §§ 551, 552 and 558, and Plaintiff seeks all civil and statutory penalties
27 available and applicable under Labor Code, and also attorneys' fees and costs pursuant to Labor
28 Code § 2699(g)(1).

1
2 **TENTH CAUSE OF ACTION**

3 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
4 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**
5 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**
6 **(Against All Defendants)**

7 159. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
8 in full herein.

9 160. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff
10 and the other Aggrieved Employees accurate itemized wage statements during the applicable
11 statutory period.

12 161. California Labor Code § 226(a) requires an employer to furnish each of his or her
13 employees with an accurate, itemized statement in writing showing the gross and net earnings,
14 total hours worked, and the corresponding number of hours worked at each hourly rate; these
15 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
16 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
17 statements may be given to the employee separately from the payment of wages; in either case the
18 employer must give the employee these statements twice a month or each time wages are paid.

19 162. Similarly, Sections 7(A)-(B) of IWC Wage Order No. 1 provide: “ (A) Every
20 employer shall keep accurate information with respect to each employee including the following:
21 (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18
22 years, and designation as a minor. (3) Time records showing when the employee begins and ends
23 each work period. Meal periods, split shift intervals and total daily hours worked shall also be
24 recorded. Meal periods during which operations cease and authorized rest periods need not be
25 recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other
26 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
27 applicable rates of pay. This information shall be made readily available to the employee upon
28 reasonable request. (6) When a piece rate or incentive plan is in operation, piece rates or an

1 explanation of the incentive plan formula shall be provided to employees. An accurate production
2 record shall be maintained by the employer. (B) Every employer shall semimonthly or at the time
3 of each payment of wages furnish each employee, either as a detachable part of the check, draft, or
4 voucher paying the employee's wages, or separately, an itemized statement in writing showing:
5 (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the
6 name of the employee or the employee's social security number; and (4) the name of the
7 employer, provided all deductions made on written orders of the employee may be aggregated and
8 shown as one item."

9 163. Sections 7(C) of IWC Wage Order No. 1 further requires that: "All required
10 records shall be in the English language and in ink or other indelible form, properly dated,
11 showing month, day, and year and shall be kept on file by the employer for at least three (3) years
12 at the place of employment or at a central location within the State of California. An employee's
13 records shall be available for inspection by the employee upon reasonable request."

14 164. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
15 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
16 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
17 employee for each violation in a subsequent citation, for which the employer fails to provide the
18 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
19 Section 226. The civil penalties provided for in this section are in addition to any other penalty
20 provided by law."

21 165. Defendants failed to provide Employees with accurate itemized wage statements
22 in writing, as required by the Labor Code. The wage statements given to Employees failed to
23 accurately account for wages, overtime, and premium pay for deficient meal periods and rest
24 breaks. More specifically, the wage statements failed to incorporate shift differentials, non-
25 discretionary and performance based bonuses and/or commissions (incentive pay) into the regular
26 rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements
27 given to Employees, by Defendants, failed to include the above requirements enumerated above.
28 Employees' wage statements did not include: the total hours worked in violation of Labor Code §

226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. The wage statements also failed to account for unpaid wages and overtime due to off the clock work, namely when Employees were required to boot up their computers prior to logging into the timekeeping system and working with Defendants' clients before they clocked in and clocked out for the day. Additionally, the wage statements given to Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks, as discussed above. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Aggrieved Employees, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees with such timely and accurate wage and hour statements.

166. Plaintiff and the Aggrieved Employees suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide a wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiff and Aggrieved Employees cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net

1 wages paid to the employee during the pay period or any of the other information required to be
2 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
3 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
4 wages paid to the employee during the pay period, (iii) The name and address of the employer
5 and, (iv) The name of the employee and only the last four digits of his or her social security
6 number or an employee identification number other than a social security number. For purposes
7 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
8 objective standard] would be able to readily ascertain the information without reference to other
9 documents or information.

10 167. Therefore, as a direct and proximate cause of Defendants’ violations of Labor
11 Code § 226(a), Employees suffered injuries, including among other things confusion over
12 whether they received all wages owed them and the total numbers of hours they worked in a pay
13 period, the difficulty and expense involved in reconstructing pay records, and forcing them to
14 make mathematical computations to analyze whether the wages paid in fact compensated them
15 correctly for all hours worked. Labor Code § 226(e)(1) further instructs that: “An employee
16 suffering injury as a result of a knowing and intentional failure by an employer to comply with
17 subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
18 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
19 each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
20 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

21 168. In addition to these statutory penalties under Section 226(e), Plaintiff also seeks
22 civil penalties under the PAGA against Defendants for providing inaccurate wage statements and
23 also for failure to maintain accurate Employee records during the applicable statutory period.

24 169. To this end, Labor Code § 1174 provides that: “Every person employing labor
25 in this state shall:....(c) Keep a record showing the names and addresses of all employees
26 employed and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
27 establishments at which employees are employed, payroll records showing the hours worked
28 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable

1 piece rate paid to, employees employed at the respective plants or establishments. These records
2 shall be kept in accordance with rules established for this purpose by the commission, but in any
3 case shall be kept on file for not less than three years...”

4 170. Labor Code § 1174.5 further provides that: “Any person employing labor who
5 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
6 complete records required by subdivision (d) of Section 1174, or to allow any member of the
7 commission or employees of the division to inspect records pursuant to subdivision (b) of Section
8 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

9 171. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from
10 the policies, practices and business acts of Defendants to the extent provided by law as a
11 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of
12 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.

13 172. As alleged in more detail above, Defendants violated the above statutes by
14 failing to maintain accurate payroll records showing the hours worked daily by, and the wages
15 paid to, Plaintiff and other aggrieved non-exempt employees. Defendants’ payroll records
16 pertaining to Plaintiff and other aggrieved non-exempt employees fail to accurately reflect all
17 regular and overtime hours worked, overtime hourly rates, actual gross wages and net wages
18 earned, meal periods, and premium wages owed for denied lawful meal and rest periods.

19 173. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
20 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
21 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
22 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
23 employee per pay period for the initial violation and two hundred dollars (\$200) for each
24 aggrieved employee per pay period for each subsequent violation.”

25 174. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee
26 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
27 Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally,
28 Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section

2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 226,... subdivisions (c) and (d) of Section 1174,... 1198,...1199,...” among the provisions of the Code that allow for recovery of civil penalties pursuant to the PAGA.

175. Labor Code § 1198 also requires that: “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.” Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions for which a representative PAGA action may be commenced under Labor Code § 2699.3.

176. As such, Defendants are liable for PAGA penalties resulting from their failure to provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

177. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3).

ELEVENTH CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES

OWED IN VIOLATION OF LABOR CODE §§ 203, 204

(Against All Defendants)

178. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

179. Plaintiff and numerous Aggrieved Employees are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom. Plaintiff seeks civil

1 penalties against Defendants for their failure to timely pay Plaintiff and the Aggrieved Employee
2 all wages owed during the applicable statutory period. Defendants failed to pay these Employees
3 all wages due and certain at the time of termination or within seventy-two (72) hours of
4 resignation. The wages withheld from these Employees by Defendants remained due and owing
5 for more than thirty (30) days from the date of separation from employment.

6 180. Under Labor Code § 201, “(a) If an employer discharges an employee, the wages
7 earned and unpaid at the time of discharge are due and payable immediately....” Under Labor
8 Code § 202, “(a) If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
10 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
11 case the employee is entitled to his or her wages at the time of quitting.”

12 181. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
13 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
14 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
15 continue as a penalty from the due date thereof at the same rate until paid or until an action
16 therefor is commenced; but the wages shall not continue for more than 30 days....”

17 182. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
18 term and who is dismissed by his employer is entitled to compensation for services rendered up to
19 the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not employed
20 for a specified term and who quits the service of his employer is entitled to compensation for
21 services rendered up to the time of such quitting.”

22 183. Labor Code § 204(a) also instructs that: “All wages, ...earned by any person in
23 any employment are due and payable twice during each calendar month, on days designated in
24 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
26 during which the labor was performed, and labor performed between the 16th and the last day,
27 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
28 month.” Under Labor Code § 204(d), “[t]he requirements of this section shall be deemed satisfied

1 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
2 more than seven calendar days following the close of the payroll period.” As detailed above,
3 Defendants maintained a consistently applied policy and practice of not paying all wages earned
4 between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all
5 wages earned between the 16th and the last day of the month between the 1st and 10th day of the
6 following month. Defendants similarly failed to pay all wages earned by not more than seven
7 calendar days following the close of the payroll period.

8 184. Defendants failed to pay Plaintiff and the Aggrieved Employees without
9 abatement, all wages as defined by applicable California law. Among other things, these
10 Employees were not paid all regular and overtime wages, including by Defendants failing to pay
11 for all hours worked or requiring off the clock work and by failing to correctly calculate the
12 regular rate by not incorporating shift differentials, incentive pay, non-discretionary bonuses
13 and/or commissions used to calculate and overtime compensation for Plaintiff and Aggrieved
14 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
15 rest periods, as further detailed in this Complaint. Defendants’ failure to pay said wages within the
16 required time was willful within the meaning of Labor Code § 203.

17 185. All wages due and owing to Plaintiff and the Aggrieved Employees, including as
18 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
19 wages required by Labor Code § 1194 and other sections became due and payable to each
20 employee in each pay period that he or she was not provided with a meal period or rest period or
21 paid straight or overtime wages to which he or she was entitled.

22 186. Under Labor Code § 210, “(a) In addition to, and entirely independent and apart
23 from, any other penalty provided in this article, every person who fails to pay the wages of each
24 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be
25 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for
26 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
27 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
28 amount unlawfully withheld.”

1 187. Similarly, Section 20 of IWC Wage Order No. 1 addresses further penalties as
2 follows: “(A) In addition to any other civil penalties provided by law, any employer or any other
3 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
4 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
5 underpaid employee for each pay period during which the employee was underpaid in addition to
6 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
7 each underpaid employee for each pay period during which the employee was underpaid in
8 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
9 receive payment of all wages recovered.”

10 188. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
11 policies, practices and business acts of Defendants to the extent provided by law as a
12 Representative Action, including reasonable attorneys’ fees and costs, and underpayment of wages
13 as permitted by Labor Code § 558, as a separate civil penalty provided by the PAGA statute.

14 189. Defendants violated the above statutes by failing to promptly pay Plaintiff and
15 other aggrieved non-exempt employees all earned wages due each and every pay period, as well as
16 immediately upon termination and/or within 72 hours upon resignation.

17 190. During the applicable statutory period, Defendants violated, and continue to
18 violate, California Labor Code § 204 and Section 20 of IWC Wage Order No. 1 by failing to
19 compensate Plaintiff and other aggrieved hourly employee overtime premium wages for overtime
20 hours worked, premium pay for denied off-duty meal and rest periods (wages), and other wages
21 due to Plaintiff and other Aggrieved Employees each pay period, as alleged in more detail herein.

22 191. Further, Defendants violated, and continue to violate, California Labor Code §§
23 201-204, 2926, and 2927 by failing to compensate employees, including Plaintiff and other
24 Aggrieved Employees no longer working for Defendants, for services rendered up to the time of
25 dismissal or quitting.

26 192. Labor Code § 2699(f)(2) states: “For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs

one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

193. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: “[Labor Code §§] 201,... 202, 203, ...204,... 558,...1198,....” among the provisions of the Code that allow for recovery of civil or statutory penalties pursuant to the PAGA.

194. Defendants are liable for PAGA penalties resulting from their failure to timely pay all wages owed to Plaintiff and other Aggrieved Employees at the time of their termination of separation from employment, and failure to timely pay all wages owed twice monthly. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and 2927, and Plaintiff seeks all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage Order(s), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

195. Aggrieved Employees may recover penalties for Defendants’ failure to timely pay all wages owed, as the civil penalty under California Labor Code 558 applies to any provision regulating hours and days of work in any Order, and Plaintiff has fully complied with procedures specified in Labor Code § 2699.3. For the purposes of this cause of action, recovery of civil penalties will therefore also include the recovery of underpaid wages pursuant to Labor Code §§ 558(a)(1)-(3), in an amount according to proof and subject to Court approval.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. On the First Cause of Action: For recovery of all civil penalties for unpaid

1 minimum and regular wages for all hours worked during the applicable statutory period as
2 permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, 221 and 204 and Sections
3 2(K), 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties
4 available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199,
5 2699(f)(2), and 2699.5, to be distributed in the manner provided by Labor Code § 2699(i), with
6 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
7 amount according to proof and subject to approval by the Court;

8 2. On the Second Cause of Action: For recovery of all civil penalties for unpaid
9 overtime and premium wages for all hours worked during the applicable statutory period as
10 permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20
11 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and
12 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and
13 2699.5, with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees
14 in an amount according to proof and subject to approval by the Court;

15 3. On the Third Cause of Action: For recovery of all civil penalties for failure to Pay
16 Vacation Days including all civil and statutory penalties available and applicable, and wages,
17 under Labor Code with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
18 Employees in an amount according to proof and subject to approval by the Court;

19 4. On the Fourth Cause of Action: For recovery of all civil penalties for failure to
20 Comply with Labor Code § 245 *et seq.* and 246 including all civil and statutory penalties available
21 and applicable, and wages, under Labor Code with 75% of recovery to the LWDA and 25% of the
22 recovery to the Aggrieved Employees in an amount according to proof and subject to approval by
23 the Court; Aggrieved Employees in an amount according to proof and subject to approval by the
24 Court;

25 5. On the Fifth Cause of Action: For recovery of all civil penalties for non-compliant
26 meal periods during the applicable statutory period and failure to pay one-hour of premium wages
27 to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
28 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil and statutory

1 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
2 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
3 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
4 Employees in an amount according to proof and subject to approval by the Court.

5 6. On the Sixth Cause of Action: For recovery of all civil penalties for non-compliant
6 rest periods during the applicable statutory period and failure to pay one-hour of premium wages
7 to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
8 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil and statutory
9 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
10 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
11 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
12 Employees in an amount according to proof and subject to approval by the Court.

13 7. On the Seventh Cause of Action: For recovery of all civil penalties for Defendants'
14 failure to reimburse all necessary business expenses incurred by Plaintiff and the Aggrieved
15 Employees as permitted by Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable
16 IWC Wage Orders, including all civil and statutory penalties available and applicable under Labor
17 Code §§ 2802 and 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i),
18 with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
19 amount according to proof and subject to approval by the Court.

20 8. On the Eighth Cause of Action: For recovery of all civil penalties for failure to
21 provide one day of rest in seven, under Labor Codes §§ 551 and 552, including all civil and
22 statutory penalties available and applicable under the Labor Code, to be distributed in the manner
23 provided by Labor Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery
24 to the Aggrieved Employees in an amount according to proof and subject to approval by the Court.

25 9. On the Ninth Cause of Action: For recovery of all civil penalties for violating
26 Labor Code §§ 212 and 213, including all civil and statutory penalties available and applicable
27 under the Labor Code, to be distributed in the manner provided by Labor Code § 2699(i), with
28 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an

1 amount according to proof and subject to approval by the Court.

2 10. On the Tenth Cause of Action: For recovery of all civil penalties for inaccurate
3 wage statements Defendants provided to Plaintiff and the Aggrieved Employees and failure to
4 maintain employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and
5 Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and
6 statutory penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and
7 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
8 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
9 according to proof and subject to approval by the Court;

10 11. On the Eleventh Cause of Action: For recovery of all civil penalties pursuant to
11 Labor Code § 2699(f)(2) where a statutory civil penalty is not provided, for failing to timely pay
12 all wages owed and to timely pay them to Aggrieved Employees upon termination or separation
13 from employment as permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and
14 2927, including all civil and statutory penalties, and wages, available and applicable under Labor
15 Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC
16 Wage Order(s), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
17 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
18 according to proof and subject to approval by the Court;

19 12. For reasonable attorneys' fees and costs of suit to the extent permitted under the
20 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
21 according to proof and subject to Court approval.

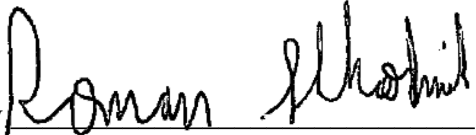
22 13. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
23 California on readily calculable monies due to the extent provided by California law and
24 authorized under the PAGA, in an amount according to proof;

25 14. For the Court to otherwise determine the appropriate remedy to compensate
26 Plaintiff and each Aggrieved Employee as required to promote fairness and justice; and

27 15. For such other and further relief as this Court may deem necessary, proper and/or
28 just.

1 DATED: January 26, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

2
3 By 

4 David Yeremian

Roman Shkodnik

5 Attorneys for Plaintiff ROBERT BRITO
6 and all similarly aggrieved employees
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DATED: January 26, 2022

By Roman Shkodnik
David Yeremian
Roman Shkodnik
Attorneys for Plaintiff ROBERT BRITO
and all similarly aggrieved employees

EXHIBIT A

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

October 21, 2021

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Brothers International Desserts dba Brothers International Desserts Inc.
Mark Lerner, Agent for Service
5 Hutton Center Dr.
Santa Ana CA 92707
Certified Mail Tracking Number: 7019 2970 0000 5059 6943

Brothers International Desserts dba Brothers International Desserts Inc.
2727 S. Susan Street
Santa Ana CA 92704
Certified Mail Tracking Number: 7019 2970 0000 5059 6837

Re: Labor Code § 2699 Penalties
Brito v. Brothers International Desserts dba Brothers International Desserts Inc.

Gentlepersons:

This office represents Plaintiff Robert Brito (“Plaintiff”) and other aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* 2751, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

Plaintiff wishes to bring a representative action on behalf of himself and the State of California against Defendants Brothers International Desserts dba Brothers International Desserts Inc. and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth the facts and theories of California Labor Code violations which we Defendants engaged in with respect to our client and all of their California employees.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked off-the-clock without compensation by going through lengthy temperature checks each day, as part of their duties under Defendants' employ, for which they were never compensated, answering phone calls from Defendants' employees and supervisors, and Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks to respond to any emergencies or other situations that needed to be addressed. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also failed to pay Aggrieved Employees proper overtime wages. As discussed above Aggrieved Employees were not paid for the time that they worked off-the-clock without compensation by going through lengthy temperature checks each day, as part of their duties under Defendants' employ, for which they were never compensated, answering phone calls from Defendants' employees and supervisors, and Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks to respond to any emergencies or other situations that needed to be addressed. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Additionally, Defendants also paid nondiscretionary commissions, incentive pay, and/or shift differentials, nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay was calculated and paid.

Defendants had a common policy and/or practice of denying Aggrieved Employees proper meal periods. Specifically, Aggrieved Employees were required to work through their meal periods which they were consistently denied. Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their meal breaks and to respond to any emergencies or other situations that needed to be addressed prevented Aggrieved Employees from taking their breaks. Also, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and

applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Aggrieved Employees who often worked at least twelve (12) hours in a day were entitled to at least two breaks but were required to work through their periods which they were continuously denied. Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their rest breaks and to respond to any emergencies or other situations that needed to be addressed prevented Aggrieved Employees from taking their breaks. Defendants also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants also had a common policy and/or practice of unlawfully collecting or receiving wages from Aggrieved Employees. As discussed above, Defendants also had a common policy and/or practice of understating the hours worked by Aggrieved Employees.

Defendants had a common policy and practice of failing to reimburse Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage, which were necessary to perform their duties under Defendants' employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ.

Defendants violated Labor Code §§ 212 and 213 by issuing payment to Aggrieved Employees for their wages in a non-Labor Code-compliant instrument as Defendants would issue store gift cards to Aggrieved Employees to be included as a form of compensation for overtime payments as described above.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved

Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above.

Furthermore, Defendants caused Aggrieved Employees to go without a day of rest when they required Aggrieved Employees to forego rest to which Aggrieved Employees were entitled to by scheduling or directing Aggrieved Employees to involuntarily work seven days in a row in each workweek without a day of rest. Aggrieved Employees worked more than six (6) hours of work during each shift.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked off-the-clock without compensation by going through lengthy temperature checks each day, as part of their duties under Defendants’ employ, for which they were never compensated, answering phone calls from Defendants’ employees and supervisors, and Defendants’ policy of requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks and were required to respond to any emergencies or other situations that needed to be addressed,. Accordingly, Aggrieved Employees were required to work without pay. Thus, Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Plaintiff and Aggrieved Employees seek to recover wages and penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well

as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked off-the-clock by going through lengthy temperature checks each day, as part of their duties under Defendants' employ, for which they were never compensated answering phone calls from Defendants' employees and supervisors, Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their meal and rest breaks, and were required to respond to any emergencies or other situations that needed to be addressed, and time spent working while clocked out for meal breaks caused Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

In light of the forgoing, the Plaintiff and Aggrieved Employees seek to recover penalties. Plaintiff and the Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3.

Failure to Comply with Labor Code §§ 245 et seq. and 246

California Labor Code § 245 et seq. requires that Defendants provide paid sick time to

Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1). Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, Aggrieved Employees were required to work through their meal periods which they were consistently denied. Moreover, Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their meal breaks and to respond to any emergencies or other situations that needed to be addressed prevented Aggrieved Employees from taking their breaks. Moreover, as discussed above, what meal periods Aggrieved Employees did take, were consistently less than 30 minutes, and taken well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Specifically, Aggrieved Employees who often worked at least twelve (12) hours in a day were entitled to at least three breaks but were required to work through their periods which they were continuously denied. Additionally, Defendants' policy of requiring the Aggrieved Employees to keep their radios on throughout their rest breaks and to respond to any emergencies or other situations that needed to be addressed prevented Aggrieved Employees from taking their breaks. Moreover, Aggrieved Employees were not paid for

whatever rest breaks they were provided. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Defendants paid nondiscretionary commissions, shift differentials, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone usage, which were necessary to perform their duties under Defendants' employ which was used throughout the course of Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Provide One Day's Rest in Seven

California Labor Code § 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code § 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. Moreover, California Labor Code § 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, on information and belief, Defendants sometimes scheduled Aggrieved Employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. Because 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 Employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the Labor Code § 558.

Violation of Labor Code §§ 212 and 213

California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of § 212(a)(1) forbids an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for by the instrument.

Labor Code § 213 prohibits an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee.

Defendants violated Labor Code §§ 212 and 213 by issuing payment to Aggrieved Employees for their wages in a non-Labor Code-compliant instrument as Defendants would issue store gift cards to Aggrieved Employees to be included as a form of compensation for overtime payments as described above. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to the Labor Code.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the above requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, discussed above. Please see true and correct copy of Plaintiff's wage statement attached hereto as "Exhibit 1."

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226

shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the other Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees’ wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194.

Failure to Keep Records In Accordance With Labor Code § 1174

Section 1174 requires employers to keep records showing payroll records and the hours worked daily by and the wages paid to employees. Failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants’ employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

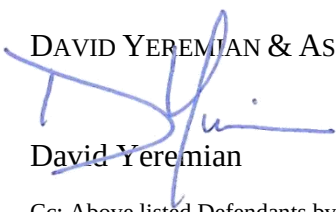
We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Above listed Defendants by Certified Mail

EXHIBIT 1

Earnings Statement

ROBERT BRITO

Pay Date:	05/14/2021	Company: 0RH28 - BROTHERS INTERNATIONAL	Emp #: 0222
Period Start:	04/26/2021	DESSERTS INC	Dept: 14 - Quality Control
Period End:	05/09/2021	3400 W. SEGERSTROM AVE	Pay Basis: Hourly
		SANTA ANA CA 92704 (949) 655-0080	

	Rate	Hours/Units	Current Period	Year To Date
Earnings				
Regular	24.00	72.00	1728.00	17628.01
Overtime	36.00	12.13	436.68	4220.60
Paid Time Off	24.00	0.00	0.00	1406.72
Attendance Incentive			65.00	65.00
Safety Incentive			0.00	100.00
Gross		84.13	2229.68	23420.33
W/H Taxes				
Federal W/H(S/3)			163.01	1835.19
Medicare			31.32	329.42
Social Security			133.89	1408.54
California State W/H(S/3)			61.64	716.92
CaliforniaSDI Tax			25.91	272.62
Deductions				
401K %			89.19	936.82
Dental Anthem - HMO			16.78	167.80
EE Anthem - HMO			44.63	446.30
VSP Vision			8.78	87.80
Net Pay			1654.53	17218.92
Net Pay Distribution				
Direct Deposit Net Check			1654.53	17218.92 A/C:9690
Employee Benefits, Allowances, and Other				
			Current Period	Year To Date
401K % - Match			89.19	936.82 *Company Match
PTO Hours			4.92	90.64
				107.28
				-16.64

Earnings Statement

ROBERT BRITO

Pay Date:	04/02/2021	Company: 0RH28 - BROTHERS INTERNATIONAL	Emp #: 0222
Period Start:	03/15/2021	DESSERTS INC	Dept: 14 - Quality Control
Period End:	03/28/2021	3400 W. SEGERSTROM AVE	Pay Basis: Hourly
		SANTA ANA CA 92704 (949) 655-0080	

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	24.00	72.00	1728.00	12252.01	
Overtime	36.00	7.66	275.76	2779.52	
Paid Time Off	24.00	8.00	192.00	1214.72	
Safety Incentive			100.00	100.00	
Gross		87.66	2295.76	16346.25	
W/H Taxes					
Federal W/H(S/3)			170.63	1278.68	
Medicare			32.27	229.90	
Social Security			137.99	983.01	
California State W/H(S/3)			67.23	499.38	
CaliforniaSDI Tax			26.71	190.26	
Deductions					
401K %			91.83	653.85	
Dental Anthem - HMO			16.78	117.46	
EE Anthem - HMO			44.63	312.41	
VSP Vision			8.78	61.46	
Net Pay			1698.91	12019.84	Voucher No. 15299DD
Net Pay Distribution					
Direct Deposit Net Check			1698.91	12019.84	A/C:9690
Employee Benefits, Allowances, and Other					
			Current Period	Year To Date	YTD Taken Available
401K % - Match			91.83	653.85	*Company Match
PTO Hours			4.92	75.88	99.28 -23.40

ROBERT BRITO

Pay Date:		12/23/2020	Company: 0RH28 - BROTHERS INTERNATIONAL		Emp #: 0222
Period Start:		12/07/2020	DESSERTS INC		Dept: 14 - Quality Control
Period End:		12/20/2020	1682 KETTERING ST		
			IRVINE CA 92614 (949) 655-0080		Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	23.50	72.00	1692.00	43253.64	
Overtime	35.25	7.93	279.53	16689.13	
Paid Time Off	23.50	8.00	188.00	3078.50	
Approved Non-Worked Hours	23.50	0.00	0.00	940.00	
December Bonus			0.00	750.00	
Incentive Pay			0.00	250.00	
Safety Incentive			0.00	375.00	
Gross		87.93	2159.53	65336.27	
W/H Taxes					
Federal W/H(S/3)			155.68	5756.16	
Medicare			30.30	931.01	
Social Security			129.54	3980.86	
California State W/H(S/3)			57.42	2317.38	
CaliforniaSDI Tax			20.89	642.07	
Deductions					
401K %			86.38	2613.45	
Dental Anthem - HMO			16.78	436.28	
EE Anthem - HMO			44.63	89.26	
VSP Vision			8.78	228.28	
Net Pay			1609.13	48341.52	Voucher No. 14704DD
Net Pay Distribution					
Direct Deposit Net Check			1609.13	48341.52	A/C:9690
Employee Benefits, Allowances, and Other					
			Current Period	Year To Date	YTD Taken Available
401K % - Match			86.38	2613.45	*Company Match
PTO Hours			4.92	41.44	48.00 -6.56