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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 21 2021

BY Daisy Bailon
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CIV SB 2134762

Case No.:

JEHU JIMENEZ, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and other
aggrieved employees,

Plaintiff,

vs.

APPLE CORE ENTERPRISES, INC., a
North Dakota corporation;
APPLEVALLEY, INC., a North Dakota
corporation; APPLE BMONT, INC., a
North Dakota corporation;
APPLECENTRO, INC., a North Dakota
corporation; APPLE CITY, INC., a North
Dakota corporation; APPLE PALM, INC., a
North Dakota corporation; APPLE
QUINTA, INC., a North Dakota
corporation; APPELEXICO, INC., a North
Dakota corporation; and DOES 1 through
10, inclusive,

Defendants.

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, § 11050 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Claim for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jehu Jimenez, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of the State of California and all
3 other aggrieved employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as a non-exempt, hourly
9 paid employee and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of civil
17 penalties sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this county,
24 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
25 occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Jehu Jimenez is a resident of Yucca Valley, in San Bernardino County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from

1 approximately March 2021 to May 2021. Plaintiff worked for Defendants as a Cook at their
2 Applebee's Grill + Bar restaurant located in Yucca Valley, California. Plaintiff typically
3 worked six (6) to seven (7) hours per day, five (5) days per week, usually working the day shift.
4 At the time his employment ended, Plaintiff was compensated approximately \$15.00 per hour.
5 Plaintiff's job duties included, without limitation, preparing ingredients, cooking, taking out the
6 trash, washing dishes, mopping floors, and cleaning the kitchen area.

7 5. APPLE CORE ENTERPRISES, INC. was and is, upon information and belief, a
8 North Dakota corporation, and at all times hereinafter mentioned, an employer whose
9 employees are engaged throughout this county and the State of California, or the various states
10 of the United States of America.

11 6. APPLEVALLEY, INC. was and is, upon information and belief, a North Dakota
12 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
13 throughout this county and the State of California, or the various states of the United States of
14 America.

15 7. APPLE BMONT, INC. was and is, upon information and belief, a North Dakota
16 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
17 throughout this county and the State of California, or the various states of the United States of
18 America.

19 8. APPLECENTRO, INC. was and is, upon information and belief, a North Dakota
20 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
21 throughout this county and the State of California, or the various states of the United States of
22 America.

23 9. APPLE CITY, INC. was and is, upon information and belief, a North Dakota
24 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
25 throughout this county and the State of California, or the various states of the United States of
26 America.

27 10. APPLE PALM, INC. was and is, upon information and belief, a North Dakota
28 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged

1 throughout this county and the State of California, or the various states of the United States of
2 America.

3 11. APPLE QUINTA, INC. was and is, upon information and belief, a North Dakota
4 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
5 throughout this county and the State of California, or the various states of the United States of
6 America.

7 12. APPEXICO, INC. was and is, upon information and belief, a North Dakota
8 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
9 throughout this county and the State of California, or the various states of the United States of
10 America.

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

15 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 were the partners, agents, owners, or managers of APPLE CORE ENTERPRISES, INC.;
17 APPLEVALLEY, INC.; APPLE BMONT, INC.; APPECENTRO, INC.; APPLE CITY, INC.;
18 APPLE PALM, INC.; APPLE QUINTA, INC.; and APPEXICO, INC., at all relevant times.

19 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, APPLE CORE
21 ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.; APPECENTRO,
22 INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE QUINTA, INC.; APPEXICO, INC.;
23 and/or DOES 1 through 10 (collectively, "Defendants" or "APPLEBEES"), each acting as the
24 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other
25 co-Defendants and was acting within the course and scope of such agency, employment, joint
26 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
27 and all Defendants were in accordance with, and represent, the official policy of Defendants.

28 16. At all relevant times, Defendants, and each of them, ratified each and every act

1 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
2 and abetted the acts and omissions of each and all the other Defendants in proximately causing
3 the damages herein alleged.

4 17. Plaintiff is informed and believes, and thereon alleges, that each of said
5 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
6 omissions, occurrences, and transactions alleged herein.

7 18. Under California law, Defendants are jointly and severally liable as employers
8 for the violations alleged herein because they have each exercised sufficient control over the
9 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
10 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
11 their work schedule and/or conditions of employment, determined their rate of pay, and
12 maintained their employment records. Defendants suffered or permitted Plaintiff and class
13 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
14 employment relationship. As joint employers of Plaintiff and class members, Defendants are
15 jointly and severally liable for the civil penalties available to Plaintiff and class members under
16 the law.

17 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
18 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
19 members because Defendants have:

- 20 (a) jointly exercised meaningful control over the work performed by Plaintiff
21 and class members;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and class members’
23 wages, hours, and working conditions, including the quantity, quality
24 standards, speed, scheduling, and operative details of the tasks performed
25 by Plaintiff and class members;
- 26 (c) jointly required that Plaintiff and class members perform work which is
27 an integral part of Defendants’ businesses; and
- 28 (d) jointly exercised control over Plaintiff and class members as a matter of

1 economic reality in that Plaintiff and class members were dependent on
2 Defendants, who shared the power to set the wages of Plaintiff and class
3 members and determined their working conditions, and who jointly
4 reaped the benefits from the underpayment of their wages and
5 noncompliance with other statutory provisions governing their
6 employment.

7 20. Plaintiffs is informed and believes, and thereon allege, that at all relevant times
8 there has existed a unity of interest and ownership between Defendants such that any
9 individuality and separateness between the entities has ceased.

10 21. APPLE CORE ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE
11 BMONT, INC.; APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE
12 QUINTA, INC.; APPELEXICO, INC.; and/or DOES 1 through 10 are therefore alter egos of
13 each other.

14 22. Adherence to the fiction of the separate existence of Defendants would permit an
15 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
16 liability for the wrongful acts committed by them under the name APPLEBEES.

17 23. Plaintiffs further allege, upon information and belief that the defendants APPLE
18 CORE ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.;
19 APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE QUINTA, INC.;
20 and APPELEXICO, INC. are alter egos of each other for the following reasons:

21 (a) On the California Secretary of State's website
22 (<https://businesssearch.sos.ca.gov/>) APPLE CORE ENTERPRISES,
23 INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.;
24 APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.;
25 APPLE QUINTA, INC.; and APPELEXICO, INC. have the same entity
26 address (509 30th Ave. NW, Minot, ND 58703) and mailing address (PO
27 BOX 969, Minot, ND 58702);

28 (b) According to their most recent "Statement of Information" forms filed

1 with the California Secretary of State, APPLE CORE ENTERPRISES,
2 INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.;
3 APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.;
4 APPLE QUINTA, INC.; and APPEXICO, INC. share the same officers
5 and/or directors, including, but not limited to, Myron D. Thompson, who
6 serves as Chief Executive Officer, Marguerite Nessel, who serves as
7 Chief Financial Officer, and Leah Bjerklie, who serves as Secretary;

8 (c) On the California Secretary of State's website, APPLE CORE
9 ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.;
10 APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.;
11 APPLE QUINTA, INC.; and APPEXICO, INC. share the same agent
12 for service of process, CORPORATION SERVICE COMPANY WHICH
13 WILL DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS
14 INCORPORATING SERVICE (C1592199); and

15 (d) On information and belief, APPLE CORE ENTERPRISES, INC.;
16 APPLEVALLEY, INC.; APPLE BMONT, INC.; APPLECENTRO,
17 INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE QUINTA,
18 INC.; and APPEXICO, INC. utilize the same standardized employment
19 forms and issue the same employment policies.

20 **GENERAL ALLEGATIONS**

21 24. Defendants operate as a franchisee of Applebee's Grill + Bar restaurants.
22 Defendants own and operate approximately 22 restaurants in Arizona, California, Minnesota,
23 and North Dakota, including at least eight (8) locations in California. Upon information and
24 belief, Defendants maintain a single, centralized Human Resources ("HR") department at their
25 corporate headquarters in Minot, North Dakota, which is responsible for the recruiting and
26 hiring of new employees, and communicating and implementing Defendants' company-wide
27 policies, including timekeeping policies and meal and rest period policies, to employees
28 throughout California.

1 25. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 26. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate headquarters in Minot, North Dakota, which processes payroll for
10 all non-exempt, hourly paid employees working for Defendants at their various locations and
11 jobsites in California, including Plaintiff and class members. Based upon information and
12 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 27. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

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

22 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
23 members were not paid for all hours worked because all hours worked were not recorded.

24 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive certain wages for
26 overtime compensation and that they were not receiving certain wages for overtime
27 compensation.

28 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive at least minimum
2 wages for compensation and that they were not receiving at least minimum wages for work that
3 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
4 class members were not paid at least minimum wages for work done off-the-clock.

5 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to meal periods in accordance
7 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
8 additional hour of pay at their regular rates of pay when they were not provided with timely,
9 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
10 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
11 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to rest periods in accordance
14 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
15 additional hour of pay at their regular rates of pay when they were not authorized and permitted
16 to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class
17 members were not authorized and permitted to take compliant rest periods, nor did Defendants
18 provide Plaintiff and class members with payment of one (1) additional hour of pay at their
19 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive complete and
22 accurate wage statements in accordance with California law. In violation of the California
23 Labor Code, Plaintiff and class members were not provided complete and accurate wage
24 statements.

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

1 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of all
3 wages earned upon termination of employment. In violation of the California Labor Code,
4 Plaintiff and class members did not receive payment of all wages due, including, but not limited
5 to, overtime wages, minimum wages, meal and rest premiums, and/or reporting time pay within
6 permissible time periods.

7 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of wages
9 during their employment. In violation of the California Labor Code, Plaintiff and class members
10 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
11 wages, meal and rest premiums, and/or reporting time pay within permissible time periods.

12 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they were prohibited from issuing instruments for the payment of wages
14 that were not payable in cash on demand, without discount and with authorization, but did so,
15 in violation of the California Labor Code.

16 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and/or class members were entitled to the portion of wages
18 previously paid and subsequently unlawfully deducted by Defendants.

19 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and/or class members were entitled to payment of wages as
21 designated by statute. In violation of the California Labor Code, Defendants secretly paid
22 Plaintiff and/or class members lower wages than required by statute while purporting to pay
23 them proper wages.

24 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to suitable resting facilities
26 that employees may use to cease work and recover during meal or rest periods, but failed to
27 provide suitable resting facilities.

28 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to be paid reporting time pay
2 when they reported to work for their scheduled shift but were put to work for less than half of
3 the regular schedule. In violation of the California Labor Code and applicable IWC Wage
4 Order, Defendants did not pay Plaintiff and class members all reporting time pay due.

5 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive reimbursement for
7 all business-related expenses and costs they incurred during the course and scope of their
8 employment and that they did not receive reimbursement of applicable business-related
9 expenses and costs incurred.

10 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
12 class members with safety devices and safeguards, such as personal protective equipment to
13 protect their life, safety, and health in the workplace, but failed to do so.

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

20 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

violations was committed.”

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

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

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

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

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

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

(a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

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

8 (c) The employer may cure the alleged violation within thirty-three (33)
9 calendar days of the postmark date of the notice. The employer shall give
10 written notice by certified mail within that period of time to the aggrieved
11 employee or representative and the agency if the alleged violation is
12 cured, including a description of actions taken, and no civil action
13 pursuant to Section 2699 may commence. If the alleged violation is not
14 cured within the 33-day period, the employee may commence a civil
15 action pursuant to Section 2699.

16 51. On October 15, 2021, Plaintiff provided written notice by online filing to the
17 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
20 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
21 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
22 PAGA Case Number LWDA-CM-848790-21. A true and correct copy of Plaintiff's written
23 notice to the LWDA and Defendants dated October 15, 2021, is attached hereto as "Exhibit 1."

24 52. As of the filing date of this complaint, over 65 days have passed since Plaintiff
25 sent the written notice described above, and the LWDA has not responded that it intends to
26 investigate Plaintiff's claims, and Defendants have not cured the violations.

27 53. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for

violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

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

55. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

57. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

CLASS ACTION ALLEGATIONS

58. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

59. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

2 60. Plaintiff's proposed class consists of and is defined as follows:

3 All persons who worked for Defendants as non-exempt, hourly
4 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

5 61. Plaintiff's proposed subclass consists of and is defined as follows:

6 All persons who worked for Defendants as non-exempt, hourly
7 paid employees in California and who received at least one wage
statement within one (1) year prior to the filing of the initial
8 complaint until the date of trial ("Subclass").

9 62. Members of the Class and Subclass are referred to herein as "class members."

10 63. Plaintiff reserves the right to redefine the Class and Subclass and to add
11 additional subclasses as appropriate based on further investigation, discovery, and specific
12 theories of liability.

13 64. There are common questions of law and fact as to class members that
14 predominate over questions affecting only individual members, including, but not limited to:

- 15 (a) Whether Defendants required Plaintiff and class members to work over
16 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
17 hours per week and failed to pay all legally required overtime
18 compensation to Plaintiff and class members;
- 19 (b) Whether Defendants failed to pay Plaintiff and class members at least
20 minimum wages for all hours worked;
- 21 (c) Whether Defendants failed to provide Plaintiff and class members with
22 meal periods;
- 23 (d) Whether Defendants failed to authorize and permit Plaintiff and class
24 members to take rest periods;
- 25 (e) Whether Defendants provided Plaintiff and class members with complete
26 and accurate wage statements as required by California Labor Code
27 section 226(a);
- 28 (f) Whether Defendants maintained accurate payroll records as required by

California Labor Code section 1174(d);

- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay to Plaintiff and class members during their employment;
- (i) Whether Defendants issued instruments for the payment of wages that were not payable in cash on demand and without discount, in violation of Labor Code sections 212 and 213;
- (j) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and/or class members, in violation of California Labor Code sections 221 and 224;
- (k) Whether Defendants secretly paid Plaintiff and/or class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (l) Whether Defendants failed to provide Plaintiff and/or class members suitable resting facilities;
- (m) Whether Defendants required Plaintiff and/or class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;
- (n) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (o) Whether Defendants failed to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment;

- 1 (p) Whether Defendants engaged in unlawful and unfair business practices in
2 violation of California Business & Professions Code sections 17200, *et*
3 *seq.*; and
4 (q) The appropriate amount of damages, restitution, or monetary penalties
5 resulting from Defendants' violations of California law.

6 65. There is a well-defined community of interest in the litigation and the class
7 members are readily ascertainable:

- 8 (a) Numerosity: The class members are so numerous that joinder of all
9 members would be unfeasible and impractical. The membership of the
10 entire class is unknown to Plaintiff at this time; however, the class is
11 estimated to be greater than one hundred (100) individuals and the
12 identity of such membership is readily ascertainable by inspection of
13 Defendants' employment records.
14 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
15 the interests of each class member with whom he has a well-defined
16 community of interest, and Plaintiff's claims (or defenses, if any) are
17 typical of all class members as demonstrated herein.
18 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
19 the interests of each class member with whom he has a well-defined
20 community of interest and typicality of claims, as demonstrated herein.
21 Plaintiff acknowledges that he has an obligation to make known to the
22 Court any relationship, conflicts or differences with any class member.
23 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
24 governing class action discovery, certification, and settlement. Plaintiff
25 has incurred, and throughout the duration of this action, will continue to
26 incur costs and attorneys' fees that have been, are, and will be necessarily
27 expended for the prosecution of this action for the substantial benefit of
28 each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve
3 economies of time, effort, and expense as compared with separate
4 lawsuits, and will avoid inconsistent outcomes because the same issues
5 can be adjudicated in the same manner and at the same time for the entire
6 class.

7 (e) Public Policy Considerations: Employers in the State of California
8 violate employment and labor laws every day. Current employees are
9 often afraid to assert their rights out of fear of direct or indirect retaliation.
10 Former employees are fearful of bringing actions because they believe
11 their former employers might damage their future endeavors through
12 negative references and/or other means. Class actions provide the class
13 members who are not named in the complaint with a type of anonymity
14 that allows for the vindication of their rights while simultaneously
15 protecting their privacy.

16 **FIRST CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
18 **(Against all Defendants)**

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

21 67. Labor Code section 1198 makes it illegal to employ an employee under
22 conditions of labor that are prohibited by the applicable wage order. California Labor Code
23 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
24 be the . . . standard conditions of labor for employees. The employment of any employee . . .
25 under conditions of labor prohibited by the order is unlawful.”

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

1 worked by the person on a daily or weekly basis.

2 69. Specifically, the applicable IWC Wage Order provides that Defendants are and
3 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
4 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
5 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

6 70. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
8 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
9 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
10 employee, including nondiscretionary bonuses and incentive pay.

11 71. California Labor Code section 510 codifies the right to overtime compensation
12 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
13 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
14 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
15 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
16 the seventh (7th) day of work.

17 72. First, during the relevant period, Defendants had, and continue to have, a
18 company-wide policy of discouraging and impeding Plaintiff and class members from recording
19 hours worked that were outside of their scheduled shifts to limit the amount of overtime
20 employees could accrue. For example, Defendants expected Plaintiff and class members to
21 clock out at the end of their shifts after they finished cleaning their work areas, but then wait on
22 the premises until all employees who worked the same shift finished cleaning their respective
23 work areas. As a result, Plaintiff and class members would wait up to five (5) minutes under
24 the control of Defendants but were not compensated for this time.

25 73. Second, on information and belief, Defendants had, and continue to have, a
26 company-wide policy of strictly staffing their restaurant locations based on the labor hours
27 allocated by each restaurant's labor or payroll budget, which has resulted in, and continues to
28 result in, chronic understaffing and a lack of adequate meal period coverage, because there were

1 too few employees on duty to handle the workload and attend to customers. Moreover,
2 Defendants had a practice of failing to schedule or provide meal periods at all, which further
3 caused Plaintiff and class members to not be relieved of their duties for compliant meal periods.
4 As a result of this inadequate meal period coverage, Plaintiff and class members were not always
5 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive
6 a meal period. For example, Plaintiff and class members were not scheduled for meal periods
7 and frequently worked through them because there were not enough employees on duty to meet
8 customer demand. Consequently, Plaintiff and class members performed work during meal
9 periods for which they were not paid.

10 74. Third, during the relevant time period, Defendants had a company-wide “on-call”
11 policy, whereby they scheduled Plaintiff and class members to work “on-call,” or on standby.
12 During an “on-call” shift, Plaintiff and class members had to be available and report to work
13 upon receiving a call from Defendants notifying them that they needed to come in and work.
14 When scheduled to be “on-call,” Plaintiff and class members were required to wait for the
15 restaurant to call them an hour before the start of their scheduled shift to see if they were
16 required to come in and work. Plaintiff and class members were, in essence, controlled by
17 Defendants because they could not use the standby time freely for their own purposes and were
18 forced to put their lives on hold. For example, Plaintiff refrained from making plans altogether
19 on days he was scheduled for a standby shift because he knew that he had to drop whatever he
20 was doing at a moment’s notice if he received a call from Defendants to report to work.
21 However, Defendants did not pay Plaintiff and class members for the time during which they
22 were waiting to receive a call from Defendants and unable to use their time for their own
23 purposes.

24 75. Defendants knew or should have known that as a result of these company-wide
25 practices and/or policies, Plaintiff and class members were working after their shifts and/or
26 during their meal periods, and were suffered or permitted to perform work for which they were
27 not paid. Because Plaintiff and class members sometimes worked shifts of eight (8) hours a day
28 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for

1 overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages
2 for all of the overtime hours they actually worked.

3 76. Defendants' failure to pay Plaintiff and class members the balance of overtime
4 compensation as required by California law, violates the provisions of California Labor Code
5 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
6 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
7 and attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 10 **Minimum Wages** 11 **(Against all Defendants)**

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

14 78. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
15 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
16 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
17 fixed is unlawful. Compensable work time is defined by the applicable wage order, IWC Wage
18 Order No. 5-2001, as "the time during which an employee is subject to the control of an
19 employer, and includes all the time the employee is suffered or permitted to work, whether or
20 not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

21 79. As set forth above, due to Defendants' company-wide policy and/or practice of
22 not permitting employees to record all their hours worked, Defendants failed to record the time
23 Plaintiff and class members remained under the control of Defendants after clocking out after
24 their shifts. Further, as stated above, due to Defendants' uniform practice of utilizing labor
25 budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of
26 meal period coverage, Plaintiff and class members were impeded from taking all uninterrupted
27 meal periods to which they were entitled and were required to work off-the-clock.

28 80. Furthermore, as stated, Defendants had a company-wide "on-call" policy,

1 whereby they required Plaintiff and class members to wait to be called by Defendants when
2 scheduled for “on-call” or standby shifts. However, Defendants did not pay Plaintiff and class
3 members at least minimum wages for the time they spent waiting to see if they were needed at
4 the restaurant.

5 81. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
6 that qualified for overtime premium payment. To the extent that these off-the-clock hours did
7 not qualify for overtime premium payment, Defendants did not pay at least minimum wages for
8 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
9 1197, 1197.1, and 1198.

10 82. Defendants’ failure to pay Plaintiff and class members minimum wages violates
11 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
12 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

14 **THIRD CAUSE OF ACTION**

15 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

16 **Violations**

17 **(Against all Defendants)**

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

20 84. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff’s and
22 class members’ employment by Defendants.

23 85. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is not
27 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
28 and the employee. Under California law, first meal periods must start after no more than five

1 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

2 86. At all relevant times herein set forth, California Labor Code sections 226.7,
3 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
4 meal period mandated by an applicable order of the IWC.

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

11 88. During the relevant period, as stated, Defendants had, and continue to have, a
12 company-wide policy and/or practice of understaffing their locations due to labor budgeting,
13 which resulted in a lack of meal period coverage and prevented Plaintiff and class members
14 from taking compliant meal periods to which they were entitled. In conjunction with
15 understaffing, Defendants had a company-wide practice or policy of failing to schedule meal
16 periods or provide meal periods at all, which further caused Plaintiff and class members to not
17 be relieved of their duties for compliant meal periods. As a result, Plaintiff and class members
18 had to work through part or all of their meal periods, had their meal periods interrupted, and/or
19 had to wait extended periods of time before taking their meal periods. For example, during his
20 employment, Plaintiff was not scheduled for meal periods at all, and would subsequently work
21 through his meal periods due to customer demand and lack of coverage. Plaintiff and class
22 members did not sign valid meal period waivers on days that they were entitled to meal periods
23 and were not relieved of all duties.

24 89. Defendants knew or should have known that as a result of their policies, Plaintiff
25 and class members were not actually relieved of all duties to take timely, uninterrupted meal
26 periods. Defendants further knew or should have known that they did not pay Plaintiff and class
27 members meal period premium wages when meal periods were missed, late, short, and/or
28 interrupted.

90. Defendants also have engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods and failed to pay the full meal period premiums due.

91. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

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

93. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

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

95. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their

employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

96. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide labor budget policies and resultant understaffing prevented Plaintiff and class members from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods.

97. Furthermore, on information and belief, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and/or class members remain on the work premises during their rest periods. Because Plaintiff and/or class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or class members during rest periods.

98. As a result of Defendants’ practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods as they were entitled. For example, Plaintiff frequently worked through his shifts without taking his 10-minute rest periods due to the workload, lack of rest period coverage, and failure to schedule rest periods for employees.

99. Defendants have also engaged in a systematic, company-wide practice and/or

1 policy of not paying all rest period premiums owed when compliant rest periods are not
2 authorized and permitted. As a result, Defendants denied Plaintiff and class members rest
3 periods and failed to pay them rest period premiums due, in violation of California Labor Code
4 sections 226.7, 516, and the applicable IWC Wage Order.

5 100. Defendants' conduct violates the applicable IWC Wage Order and California
6 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
7 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
8 compensation for each work day that a compliant rest period was not authorized and permitted.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 11 **Statements and Failure to Maintain Accurate Payroll Records**

12 **(Against all Defendants)**

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

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

20 103. During the relevant time period, Defendants have knowingly and intentionally
21 provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage
22 statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass
23 members that fail to correctly list: gross wages earned; total hours worked; net wages earned;
24 the address of the legal entity that is the employer; and all applicable hourly rates in effect
25 during the pay period, including rates of pay for overtime wages and/or meal and rest period
26 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
27 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

28 104. Because Defendants did not record the time Plaintiff and Subclass members spent

1 working off-the-clock, Defendants did not list the correct amount of gross wages and net wages
2 earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and section
3 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total
4 number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2),
5 and failed to list the applicable hourly rates of pay in effect during the pay period and the
6 corresponding accurate number of hours worked at each hourly rate, in violation of section
7 226(a)(9).

8 105. In addition, and separate from these violations, Defendants issued uniform wage
9 statements to Plaintiff and Subclass members that failed to correctly list the address of the legal
10 entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to
11 provide California employees with transparency as to the true identity of their employer, to
12 allow the employee to contact their employer during employment in the future for various
13 reasons, including filing an administrative claim, judicial claim, or other action to seek relief
14 against their employer, to obtain unemployment benefits, etc. This includes providing
15 employees with a physical address of the employer and not a Post Office Box. Plaintiff's and
16 Subclass members' wage statements incorrectly list the employer's address as "P.O. Box 969,
17 Minot, ND 58702", but, according to the California Secretary of State's website,
18 APPLEVALLEY, INC.'s entity address should be "509 30th Ave. NW, Minot, North Dakota
19 58703."

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

28 107. California Labor Code section 1174(d) provides that "[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

108. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

109. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

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SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

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

111. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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

113. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

114. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

116. This cause of action is dependent upon, and wholly derivative of, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and those class members.

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

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

119. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay.

120. Defendants' failure to pay Plaintiff and class members all wages due violates

1 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
2 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

3 **EIGHTH CAUSE OF ACTION**

4 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 5 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 6 **(Against all Defendants)**

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

9 122. California Labor Code section 1198 makes it illegal to employ an employee
10 under conditions of labor that are prohibited by the applicable wage order. California Labor
11 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
12 shall be the . . . standard conditions of labor for employees. The employment of any employee
13 . . . under conditions of labor prohibited by the order is unlawful.”

14 123. California Code of Regulations, Title 8, section 11050(5)(A) provides that
15 “[e]ach workday an employee is required to report for work and does report, but is not put to
16 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
17 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
18 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be
19 less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
20 guarantee at least partial compensation for employees who report to work expecting to work a
21 specified number of hours, and who are deprived of that amount because of inadequate
22 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
23 App. 4th 556 (2012).

24 124. Upon information and belief, Defendants violated California Labor Code section
25 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants
26 failed to pay Plaintiff and class members reporting time pay when they reported to work for
27 their scheduled shift but were put to work for less than half of the regular schedule.

28 125. As stated, Defendants had a company-wide “on call” policy whereby they

1 scheduled Plaintiff and class members to work “on-call,” or on standby. When scheduled for a
2 “on-call” or standby shift, Plaintiff and class members regularly presented themselves as ready
3 for work one (1) hour prior to their scheduled standby shift and would await instructions on
4 whether to report to the restaurant, but were ultimately told not to come in. For example, on
5 several occasions Plaintiff waited at home during his scheduled standby or “on-call” shifts as
6 required by Defendants’ “on-call” policy. When this occurred, Defendants did not pay Plaintiff
7 and class members for at least half of their scheduled day’s work or the minimum reporting time
8 pay when they were subject to Defendants’ “on-call” policy and were ultimately not called.

9 126. Accordingly, Plaintiff and class members were not properly compensated with
10 reporting time pay in violation of California Labor Code section 1198 and California Code of
11 Regulations, Title 8, section 11050(5).

12 NINTH CAUSE OF ACTION

13 Violation of California Labor Code § 2802—Unpaid Business-Related Expenses 14 (Against all Defendants)

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

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

27 129. During the relevant time period, Defendants, on a company-wide basis, forced
28 Plaintiff and class members to purchase tools, supplies, and/or equipment that were necessary

1 for the completion of their work-related duties. For example, due to COVID-19, Plaintiff was
2 required to spend \$10.00 on face masks to wear at work, because Defendants required face
3 masks to be worn in their restaurants but did not provide them to employees. Although
4 Defendants required Plaintiff and class members to purchase and use their own tools, supplies,
5 and/or equipment in the performance of their duties, they did not reimburse them for these
6 expenses.

7 130. Defendants could have provided Plaintiff and class members with the actual tools
8 required for use on the job, including tools, supplies and/or equipment such as face masks. Or,
9 Defendants could have reimbursed Plaintiff and class members for their cost of their tool, supply
10 and/or equipment expenses. Instead, Defendants passed these operating costs off onto Plaintiff
11 and class members. At all relevant times, Plaintiff did not earn at least two (2) times the
12 minimum wage.

13 131. Defendants' company-wide policy and/or practice of passing on their operating
14 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
15 have intentionally and willfully failed to reimburse Plaintiff and other class members for
16 necessary business-related expenses and costs.

17 132. Plaintiff and class members are entitled to recover from Defendants their
18 business-related expenses incurred during the course and scope of their employment, plus
19 interest.

20 **TENTH CAUSE OF ACTION**

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

22 **(Against all Defendants)**

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

25 134. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
27 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221, 223,
28 224, 226(a), 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section

1 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
2 violations of those Labor Code sections not found in section 2699.5, including sections 516,
3 1182.12, 6401, and 6403.

4 135. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
7 Wage Order for Defendants' failure to compensate Plaintiff and other
8 aggrieved employees with all required overtime pay, as alleged herein;
- 9 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
10 and the applicable IWC Wage Order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;
- 13 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein;
- 16 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
17 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
18 and other aggrieved employees to take rest periods, as alleged herein;
- 19 (e) Violation of Labor Code sections 226(a), 1174(d), and 1198, and the
20 applicable IWC Wage Order for failure to provide accurate and complete
21 wage statements to Plaintiff and other aggrieved employees, as alleged
22 herein;
- 23 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as alleged
25 herein;
- 26 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
27 wages upon termination, as alleged herein;
- 28 (h) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as alleged herein;

- (i) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities, as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (o) Violation of Labor Code sections 6401 and 6403 for failure to provide Plaintiff and other aggrieved employees with safety devices and safeguards for the workplace, as set forth below.

136. California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount, at some established place of business in the state, the name and address of which must appear on the instrument. California Labor Code section 212 further prohibits employers from issuing payment of wages due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable

otherwise than in money.

137. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

138. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

139. In addition, California law only permits employers to utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted California Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

. . . (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

140. Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (sic) from promptly receiving their due wages *in full*. The

1 imposition of a fee in order to readily *access* one's earned and paid wage
2 under a payroll card program which is designed to discharge the
3 employer's wage payment obligations could impermissibly interfere with
4 an employee's receipt of wage wages by creating a financial condition
which would have the *effect* of reducing or discounting wages because
such fee would be charged against the same account in which wages are
deposited." (Emphases in original)

5 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
6 providers "effectively act as agents of the client employers in discharging the employer's wage
7 payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the Labor
8 Code does not purport to regulate the specific arrangements between employers and payroll
9 service providers, both an employer and, under the express language in Labor Code § 212- their
10 agent, must comply with its requirements." *DLSE opinion letter* 2008.07.07.2.

11 141. During the relevant time period, Defendants had an agreement with a payroll
12 service provider for the issuance of payroll cards to employees, including Plaintiff and other
13 aggrieved employees, to discharge their wage payment obligations to their employees. Upon
14 information and belief, Defendants' payroll debit program was not voluntary or optional to
15 Plaintiff and other aggrieved employees. Defendants had a practice and/or policy of
16 automatically issuing payroll debit cards to Plaintiff and other aggrieved employees without
17 giving them the option to elect their form of payment for their wages. Plaintiff and other
18 aggrieved employees also received their final wages on a payroll debit card without a choice of
19 an alternative method, including a written check.

20 142. Moreover, under Defendants' payroll debit program, on information and belief,
21 Defendants did not permit other aggrieved employees to withdraw their entire wages in at least
22 one transaction without incurring a fee. Additionally, on information and belief, other aggrieved
23 employees also encountered approximately \$2.00 in ATM fees each time they utilized an ATM
24 to withdraw funds from their payroll debit card, in addition to a multitude of other transaction
25 fees that Defendants did not disclose or properly inform other aggrieved employees of at the
26 time of issuance of the payroll cards, including, but not limited to: foreign transaction and
27 currency conversion fees in the amount of 2.5% of transaction amount, card replacement fees
28 in the amount of \$3.00 to \$9.00, and secondary card request fees in the amount of \$1.50 to \$4.50

1 and custom card request fees in the amount of \$4.95 to \$7.95, among other undisclosed fees.
2 Consequently, these undisclosed payroll debit card fees resulted in a discount in pay to other
3 aggrieved employees. In sum, Defendants' payroll debit card program presented a number of
4 obstacles and hurdles that combined, made it difficult for Plaintiff and other aggrieved
5 employees to access their entire wages without discount and without delay.

6 143. California courts recognize a policy favoring the full and prompt payment of
7 wages to employees. Defendants' payroll card program denies other aggrieved employees of
8 easy access to the entirety of their wages; thus, the program violates California Labor Code
9 sections 212 and 213. Plaintiff and other aggrieved employees are therefore entitled to recover
10 civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

11 144. At all times relevant herein, California Labor Code section 221 provides that it
12 shall be unlawful for any employer to collect or receive from an employee any part of wages
13 theretofore paid by said employer to said employee. California Labor Code section 224 also
14 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
15 deduction is expressly authorized in writing by the employee."

16 145. During the relevant time period, Defendants unlawfully deducted a portion of
17 wages previously paid to other aggrieved employees in violation of California Labor Code
18 section 221. Defendants systematically, and on a company-wide basis, provided Plaintiff and
19 other aggrieved employees with payroll debit cards as payment of as payment of their wages
20 and/or final wages. Under Defendants' payroll debit card program, other aggrieved employees
21 were assessed numerous, various fees in connection with their use of the payroll debit cards.
22 Other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person
23 teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees
24 charged to other aggrieved employees resulted in a discount of their wages.

25 146. Defendants' payroll debit card program, which resulted in a discount of wages
26 to employees, is tantamount to taking deductions from other aggrieved employees' paychecks
27 without their written authorization and therefore constitutes an unlawful deduction of wages, in
28 violation of Labor Code sections 221 and 224. Other aggrieved employees are therefore entitled

1 to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

2 147. At all times, California Labor Code section 223 makes it unlawful for an
3 employer to secretly pay wages lower than required by statute while purporting to pay legal
4 wages.

5 148. During the relevant time period, Defendants willfully and systematically issued
6 payroll debit cards to Plaintiff and other aggrieved employees. The payroll debit cards
7 discounted the wages of other aggrieved employees by charging a multitude of various fees in
8 connection with the use of the payroll debit cards. Defendants' payroll debit card program
9 resulted in the payment of less than statutorily required wages to other aggrieved employees.
10 In doing so, Defendants acted with the intent to deprive other aggrieved employees of statutory
11 wages, including, but not limited to, overtime wages and minimum wages to which they were
12 entitled to under California law. Thus, Defendants paid other aggrieved employees lower wages
13 than those they were entitled to while purporting that other aggrieved employees were properly
14 paid.

15 149. Defendants' failure to pay other aggrieved employees the correct designated
16 wage, while purporting to pay legal wages, is a violation of California Labor Code section 223.
17 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
18 Code sections 225.5 and/or 2699(a), (f), and (g).

19 150. At all relevant times herein, California Labor Code section 1198 makes it illegal
20 to employ an employee under conditions of labor that are prohibited by the applicable wage
21 order. California Labor Code section 1198 requires that ". . . the standard conditions of labor
22 fixed by the commission shall be the . . . standard conditions of labor for employees. The
23 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."
24 California Code of Regulations, Title 8, section 11050(13)(B) provides that "[s]uitable resting
25 facilities shall be provided in an area separate from the toilet rooms and shall be available to
26 employees during work hours."

27 151. Defendants' California restaurants are generally similar in their layout and
28 design and there was, and continues to be, space that allows for a resting facility that employees

1 may use to cease work and recover during meal or rest periods. Defendants could have provided
2 Plaintiff and other aggrieved employees with a resting facility within their restaurants, with
3 reasonable or no modification, but instead denied, and continues to deny, employees suitable
4 areas to rest (e.g., a breakroom). As a result, Plaintiff and other aggrieved employees were
5 forced to adjust to areas not conducive to resting, such as standing or sitting in a supply room,
6 or search for facilities outside of the restaurant which are not designated or reserved for their
7 rest, such as their personal vehicles.

8 152. Defendants did not provide Plaintiff and other aggrieved employees with suitable
9 resting facilities during their work hours, particularly during meal or rest periods. In other
10 words, during the times when Plaintiff and other aggrieved employees were legally allowed to
11 forgo assigned tasks, as in during a meal or rest period, Defendants denied them any area within
12 their restaurants to cease work and recover. Moreover, Defendants did not inform Plaintiff and
13 other aggrieved employees of their rights to suitable resting facilities under California law.

14 153. As a result of Defendants' company-wide policy and/or practice of denying
15 employees any area to rest within their restaurants and company-wide failure to provide resting
16 facilities in their restaurants, Plaintiff and other aggrieved employees were forced to adjust to
17 areas not conducive to resting or search for facilities outside their restaurants to cease work and
18 recover. Defendants' failure to provide suitable resting facilities to Plaintiff and other aggrieved
19 employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001,
20 subdivision 13(B). Plaintiff and other aggrieved employees are therefore entitled to recover
21 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

22 154. At all relevant times herein, California Labor Code section 6401 provides that
23 employers must furnish and use safety devices and safeguards, and adopt and use practices,
24 means, methods, operations, and processes which are reasonably adequate to render the
25 employment and place of employment safe and healthy. California Labor Code Section 6401
26 further provides that an employer must do everything reasonably necessary to protect the life,
27 safety and health of its employees.

28 155. Defendants, on a company-wide basis, failed to provide Plaintiff and other

aggrieved employees with personal protective equipment, such face masks, to keep them safe in the workplace. Despite the fact that Defendants required Plaintiff and other aggrieved employees to wear certain personal protective equipment, including face masks while engaged in their work-related duties, Defendants failed to fully provide such reasonably necessary equipment to Plaintiff and other aggrieved employees to keep them safe. Thus, Defendants' failure to provide Plaintiff and other aggrieved employees with safety devices and safeguards violates Labor Code sections 6401 and 6403. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

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

157. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

158. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

159. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

160. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants'

1 policies and practices have violated state law in at least the following respects:

- 2 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
3 class members, to work overtime without paying them proper
4 compensation in violation of California Labor Code sections 510 and
5 1198 and the applicable IWC Wage Order, as alleged herein;
- 6 (b) Failing to pay at least minimum wage to Plaintiff and class members in
7 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
8 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
10 members in violation of California Labor Code sections 226.7, 512(a),
11 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (d) Failing to authorize and permit Plaintiff and class members to take
13 uninterrupted rest periods in violation of California Labor Code sections
14 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (e) Failing to provide Plaintiff and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation of
18 California Labor Code sections 226(a), 1174(d), and 1198, and the
19 applicable IWC Wage Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204, as alleged herein;
- 22 (g) Issuing instruments to Plaintiff and class members for the payment of
23 wages that were not payable in cash on demand and without discount in
24 violation of Labor Code sections 212 and 213, as set forth below;
- 25 (h) Failing to pay reporting time pay in violation of California Labor Code
26 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 27 (i) Failing to reimburse Plaintiff and class members for all business expenses
28 necessarily incurred in violation of California Labor Code section 2802,

as alleged herein; and

- (j) Failing to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment, in violation of California Labor Code sections 6401 and 6403, as set forth below.

161. California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount, at some established place of business in the state, the name and address of which must appear on the instrument. California Labor Code section 212 further prohibits employers from issuing payment of wages due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

162. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

163. In addition, California law only permits employers to utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted California Labor Code sections 212 and 213 as permitting employer use

of payroll debit cards where the following requirements are satisfied:

. . . (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

164. Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (sic) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wage under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of wage wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.” (Emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as agents of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their agent, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

165. During the relevant time period, Defendants had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Plaintiff and class members, to discharge their wage payment obligations to their employees. Upon information and belief, Defendants’ payroll debit program was not voluntary or optional to Plaintiff and class members. Defendants had a practice and/or policy of automatically issuing payroll debit cards to Plaintiff and class members without giving them the option to elect their form of payment for their wages. Plaintiff and class members also received their final wages on a payroll debit card without a choice of an alternative method, including a written check.

166. California courts recognize a policy favoring the full and prompt payment of

wages to employees. Defendants' payroll card program denies employees of easy access to the entirety of their wages, thus, the program violates California Labor Code sections 212 and 213.

167. At all relevant times herein, California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees.

168. Defendants, on a company-wide basis, failed to provide Plaintiff and class members with personal protective equipment, such face masks, to keep them safe in the workplace. Despite the fact that Defendants required Plaintiff and class members to wear certain personal protective equipment, including face masks while engaged in their work-related duties, Defendants failed to fully provide such reasonably necessary equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to provide Plaintiff and class members with safety devices and safeguards violates Labor Code sections 6401 and 6403.

169. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

170. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

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1 **TWELFTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 172. Defendants are “persons” as defined by California Business & Professions Code
8 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
9 associations.

10 173. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and
11 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
12 fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to
13 enforce important rights affecting the public interest within the meaning of Code of Civil
14 Procedure section 1021.5.

15 174. Defendants’ activities, namely Defendants’ company-wide practice and/or policy
16 of not paying Plaintiff and class members all meal and rest period premiums due to them under
17 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
18 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
19 section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
20 secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
21 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
22 class members as part of their employment with Defendants, and thus Defendants’ practice
23 and/or policy of denying these statutory benefits constitutes an unfair business practice in
24 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

25 175. A violation of California Business & Professions Code sections 17200, *et seq.*
26 may be predicated on any unfair business practice. In the instant case, Defendants’ policies and
27 practices have violated the spirit of California’s meal and rest period laws and constitute acts
28 against the public policy behind these laws.

1 176. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
2 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
3 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
4 commences four years prior to the filing of this complaint; a permanent injunction requiring
5 Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class
6 members; an award of attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5 and other applicable laws; and an award of costs.

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
12 Defendants, jointly and severally, as follows:

13 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
14 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
15 reserves the right to amend his prayer for relief to seek a different amount.

16 **Class Certification**

- 17 2. That this case be certified as a class action;
18 3. That Plaintiff be appointed as the representative of the Class and Subclass;
19 4. That counsel for Plaintiff be appointed as class counsel.

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

21 5. That the Court declare, adjudge, and decree that Defendants violated California
22 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
23 pay all overtime wages due to Plaintiff and class members;

24 6. For general unpaid wages at overtime wage rates and such general and special
25 damages as may be appropriate;

26 7. For pre-judgment interest on any unpaid overtime compensation commencing
27 from the date such amounts were due, or as otherwise provided by law;

28 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

1 California Labor Code section 1194(a); and

2 9. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Second Cause of Action**

5 10. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
7 Order by willfully failing to pay minimum wages to Plaintiff and class members;

8 11. For general unpaid wages and such general and special damages as may be
9 appropriate;

10 12. For pre-judgment interest on any unpaid compensation from the date such
11 amounts were due, or as otherwise provided by law;

12 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
13 California Labor Code section 1194(a);

14 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15 15. For such other and further relief as the Court may deem equitable and
16 appropriate.

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

18 16. That the Court declare, adjudge, and decree that Defendants violated California
19 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
20 willfully failing to provide all meal periods to Plaintiff and class members;

21 17. That the Court make an award to the Plaintiff and class members of one (1) hour
22 of pay at each employee's regular rate of pay for each workday that a meal period was not
23 provided;

24 18. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 19. For premiums pursuant to California Labor Code section 226.7(c);

27 20. For pre-judgment interest on any unpaid meal period premiums from the date
28 such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

- 1 33. For statutory penalties pursuant to California Labor Code section 226(e);
2 34. For attorneys' fees and costs pursuant to California Labor Code section
3 226(e)(1); and
4 35. For such other and further relief as the Court may deem equitable and
5 appropriate.

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

7 36. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
9 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
10 the employment of Plaintiff and other terminated class members;

11 37. For all actual, consequential and incidental losses and damages, according to
12 proof;

13 38. For waiting time penalties according to proof pursuant to California Labor Code
14 section 203 for all employees who have left Defendants' employ;

15 39. For pre-judgment interest on any unpaid wages from the date such amounts were
16 due, or as otherwise provided by law;

17 40. For attorneys' fees pursuant to California Code of Civil Procedure section
18 1021.5, or as otherwise provided by law; and

19 41. For such other and further relief as the Court may deem equitable and
20 appropriate.

21 **As to the Seventh Cause of Action**

22 42. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
24 wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their
25 employment;

26 43. For all actual, consequential and incidental losses and damages, according to
27 proof;

28 44. For statutory penalties according to proof pursuant to California Labor Code

1 section 210;

2 45. For pre-judgment interest on any unpaid wages from the date such amounts were
3 due, or as otherwise provided by law;

4 46. For attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5, or as otherwise provided by law; and

6 47. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Eighth Cause of Action**

9 48. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A) by
11 failing to provide Plaintiff and class members with reporting time pay;

12 49. For all actual, consequential and incidental losses and damages, according to
13 proof;

14 50. For pre-judgment interest on any unpaid wages from the date such amounts were
15 due, or as otherwise provided by law; and

16 51. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Ninth Cause of Action**

19 52. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
21 expenses and costs incurred by Plaintiff and class members;

22 53. For unpaid business-related expenses and such general and special damages as
23 may be appropriate;

24 54. For pre-judgment interest on any unpaid business-related expenses from the date
25 such amounts were due, or as otherwise provided by law;

26 55. For all actual, consequential, and incidental losses and damages, according to
27 proof;

28 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),

1 or as otherwise provided by law; and

2 57. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Tenth Cause of Action**

5 58. That the Court declare, adjudge and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
7 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
8 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
9 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
10 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
11 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
12 earned wages upon termination); 204 (by failing to timely pay all earned wages during
13 employment); 212 and 213 (by failing to make earned wages accessible without discount); 221
14 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages
15 lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to provide
16 suitable resting facilities); 1198 and the applicable IWC Wage Order (by failing to provide
17 reporting time pay); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by
18 failing to provide safety devices and safeguards);

19 59. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3,
20 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,
21 202, 204, 212, 213, 221, 223, 224, 226(a), 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
22 1197.1, 1198, 2802, 6401, and 6403;

23 60. For attorneys' fees and costs pursuant to California Labor Code section 2699 (g)
24 (1), and any and all other relevant statutes, for Defendants' violations of California Labor Code
25 sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 510, 512(a), 516, 1174(d), 1182.12,
26 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

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

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

appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing timely to pay Plaintiff and class members all earned wages during employment, failing to provide access to wages upon demand and without discount, failing to pay Plaintiff and class members reporting time pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide Plaintiff and class members with safety devices and safeguards, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

64. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

65. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

67. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

68. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections

1 17200, *et seq.*;

2 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
3 from Plaintiff and class members and prejudgment interest from the day such amounts were due
4 and payable;

5 70. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200,
8 *et seq.*;

9 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5;

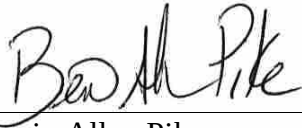
11 72. For pre-judgment and post-judgment interest as provided by law; and

12 73. For such other and further relief as the Court may deem equitable and
13 appropriate.

14
15 Dated: December 21, 2021

Respectfully submitted,

16 Capstone Law APC

17
18 By: 

19 Bevin Allen Pike
20 Daniel S. Jonathan
21 Trisha K. Monesi

22 Attorneys for Plaintiff Jehu Jimenez
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27
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EXHIBIT “1”

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

October 15, 2021

VIA ONLINE SUBMISSION

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

Subject: *Jehu Jimenez v. Apple Core Enterprises, Inc., et al.*

Dear PAGA Administrator:

This office represents Jehu Jimenez in connection with his claims under the California Labor Code. Mr. Jimenez was an employee of APPLE CORE ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.; APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE QUINTA, INC.; and/or APPEXICO, INC. For the purpose of this letter, Mr. Jimenez collectively refers to these entities as "APPLEBEES."

The employers may be contacted directly at the addresses below:

APPLE CORE ENTERPRISES, INC. 509 30TH AVE. NW MINOT, ND 58703	APPLE CORE ENTERPRISES, INC. PO BOX 969 MINOT, ND 58702	APPLEVALLEY, INC. 509 30TH AVE. NW MINOT, ND 58703
APPLEVALLEY, INC. PO BOX 969 MINOT, ND 58702	APPLE BMONT, INC. 509 30TH AVE NW MINOT, ND 58703	APPLE BMONT, INC. PO BOX 969 MINOT, ND 58702
APPLECENTRO, INC. 509 30TH AVE. NW MINOT, ND 58703	APPLECENTRO, INC. PO BOX 969 MINOT, ND 58702	APPLE CITY, INC. 509 30TH AVE NW MINOT, ND 58703
APPLE CITY, INC. PO BOX 969 MINOT, ND 58702	APPLE PALM, INC. 509 30TH AVE NW MINOT, ND 58703	APPLE PALM, INC. PO BOX 969 MINOT, ND 58702
APPLE QUINTA, INC. 509 30TH AVE. NW MINOT, ND 58703	APPLE QUINTA, INC. PO BOX 969 MINOT, ND 58702	APPEXICO, INC. 509 30TH AVE NW MINOT, ND 58703

APPLEXICO, INC.
PO BOX 969
MINOT, ND 58702

Mr. Jimenez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Jimenez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by APPLEBEES as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

APPLEBEES employed Mr. Jimenez as an hourly paid, non-exempt employee from approximately March 2021 to May 2021. Mr. Jimenez worked for APPLEBEES as a cook at its Applebee's Grill + Bar restaurant located in Yucca Valley, California. During his employment, Mr. Jimenez typically worked six (6) to seven (7) hours per day, five (5) days per week, usually working the day shift. At the time Mr. Jimenez's employment with APPLEBEES ended, he earned approximately \$15.00 per hour. His job duties included, without limitation, preparing ingredients, cooking, taking out the trash, washing dishes, mopping floors, and cleaning the kitchen area.

APPLEBEES committed one or more of the following Labor Code violations against Mr. Jimenez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

APPLEBEES Company-Wide and Uniform Payroll and HR Practices

APPLE CORE ENTERPRISES, INC.; APPLEVALLEY, INC.; APPLE BMONT, INC.; APPLECENTRO, INC.; APPLE CITY, INC.; APPLE PALM, INC.; APPLE QUINTA, INC.; and APPLEXICO, INC. are North Dakota corporations and operate as a franchisee of Applebee's Grill + Bar restaurants. APPLEBEES owns and operates approximately 22 restaurants in Arizona, California, Minnesota and North Dakota, including at least eight (8) locations in California. Upon information and belief, APPLEBEES maintains a single, centralized Human Resources (HR) department at its company headquarters in Minot, North Dakota, for all non-exempt, hourly paid employees working for APPLEBEES in California, including Mr. Jimenez and other aggrieved employees. At all relevant times, APPLEBEES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Jimenez and other aggrieved employees, regardless of its location or position.

Upon information and belief, APPLEBEES maintains a centralized Payroll department at its company headquarters in Minot, North Dakota, which processes payroll for all non-exempt, hourly paid employees working for APPLEBEES in California, including Mr. Jimenez and other aggrieved employees. Further, APPLEBEES issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Jimenez and other aggrieved employees,

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

irrespective of their location, position, or manner in which each employee's employment ended. In other words, APPLEBEES utilized the same methods and formulas when calculating wages due to Mr. Jimenez and other aggrieved employees in California.

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

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

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

First, during the relevant period, upon information and belief, APPLEBEES had, and continues to have, a company-wide policy of discouraging and impeding Mr. Jimenez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts to limit the amount of overtime employees could accrue. For example, APPLEBEES expected Mr. Jimenez and other aggrieved employees to clock out at the end of their shifts after they finished cleaning their work areas, but then wait on the premises until all employees who worked the same shift finished cleaning their respective work areas. As a result, Mr. Jimenez and other aggrieved employees would wait up to five (5) minutes under the control of APPLEBEES but were not compensated for this time.

Second, on information and belief, APPLEBEES had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each restaurant's labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Moreover, APPLEBEES had a practice of failing to schedule or provide meal periods at all, which further caused Mr. Jimenez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Mr. Jimenez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Jimenez and other aggrieved employees were not scheduled for meal periods and frequently worked through them because there were not enough employees on duty to meet customer demands. Consequently, Mr. Jimenez and other aggrieved employees performed work during meal periods for which they were not paid.

Third, during the relevant time period, APPLEBEES had a company-wide "on-call" policy, whereby it scheduled Mr. Jimenez and other aggrieved employees to work "on-call," or on standby. During an "on-call" shift, Mr. Jimenez and other aggrieved employees had to be available and report to work upon receiving a call from APPLEBEES notifying them that they needed to come in and work. When scheduled to be "on-call," Mr. Jimenez and other aggrieved employees were required to wait for the restaurant to call them an hour before the start of their scheduled shift to see if they were required to come in and work. Mr. Jimenez and other aggrieved employees were, in essence, controlled by APPLEBEES because they could not use the standby time freely for their own purposes and were forced to put their

lives on hold. For example, Mr. Jimenez refrained from making plans altogether on days he was scheduled for a standby shift because he knew that he had to drop whatever he was doing at a moment's notice if he received a call from APPLEBEES to report to work. However, APPLEBEES did not pay Mr. Jimenez and other aggrieved employees for the time during which they were waiting to receive a call from APPLEBEES and unable to use their time for their own purposes.

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

Furthermore, APPLEBEES did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, APPLEBEES paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, APPLEBEES failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, APPLEBEES failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to APPLEBEES's company-wide policy and/or practice of not permitting employees to record all their hours worked, APPLEBEES failed to record the time Mr. Jimenez and other aggrieved employees remained under the control of APPLEBEES after clocking out after their shifts. Further, as stated above, due to APPLEBEES uniform practice of utilizing labor budgets, resultant understaffing, heavy workload, failure to schedule meal periods, and lack of meal period coverage, Mr. Jimenez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Moreover, as set forth above, APPLEBEES had a company-wide "on-call" policy, whereby it required Mr. Jimenez and other aggrieved employees to wait to be called by APPLEBEES when scheduled for "on-call" or standby shifts. However, APPLEBEES did not pay Mr. Jimenez and other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the restaurant.

Thus, APPLEBEES did not pay at least minimum wages for all hours worked by Mr. Jimenez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, APPLEBEES did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, APPLEBEES regularly failed to pay at least minimum wages to Mr. Jimenez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As set forth above, APPLEBEES had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Mr. Jimenez and other aggrieved employees from taking compliant meal periods to which they were entitled. In conjunction with understaffing, APPLEBEES had a company-wide practice or policy of failing to schedule meal periods or provide meal periods at all, which further caused Mr. Jimenez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Jimenez and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Jimenez was not scheduled for meal periods at all, and would subsequently work through his unpaid meal periods due to customer demand and lack of coverage.

Further, APPLEBEES did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Jimenez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

APPLEBEES also has engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Jimenez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that APPLEBEES did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, APPLEBEES did not pay other aggrieved employees at the correct rate of pay for premiums because APPLEBEES systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

During the relevant time period, APPLEBEES regularly failed to authorize and permit Mr. Jimenez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, APPLEBEES company-wide labor budget policies and resultant understaffing, prevented Mr. Jimenez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. APPLEBEES also failed to schedule rest periods, which, coupled with APPLEBEES failure to provide adequate rest period coverage, further led to Mr. Jimenez and other aggrieved employees not being authorized and permitted to take rest periods.

Additionally, on information and belief, during the relevant time period, APPLEBEES maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Jimenez and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Jimenez and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, APPLEBEES effectively maintained control over Mr. Jimenez and/or other aggrieved employees during rest periods.

As a result, Mr. Jimenez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10)

minute rest periods to which they were entitled. For example, Mr. Jimenez frequently worked through his shifts without taking his 10-minute rest periods due to the workload, lack of rest period coverage, and failure to schedule rest periods for employees.

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

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

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

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

During the relevant time period, APPLEBEES has knowingly and intentionally provided Mr. Jimenez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, APPLEBEES issued uniform wage statements to Mr. Jimenez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, APPLEBEES violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because APPLEBEES did not record the time Mr. Jimenez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), APPLEBEES did not list the correct amount of gross wages and net wages earned by Mr. Jimenez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, APPLEBEES failed to accurately list the total number of hours worked by Mr. Jimenez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

Third, and separate from these violations, APPLEBEES issued uniform wage statements to Mr. Jimenez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Jimenez's and other aggrieved employees' wage statements incorrectly list the employer's address as "P.O. Box 969, Minot, ND 58702", but, according to the California Secretary of State's website, APPLEVALLEY, INC.'s entity address should be "509 30th Ave. NW, Minot, North Dakota 58703." *See example paystub below.*

AppleValley, Inc
PO Box 969
Minot, ND 58702

Advice Number : 0007020
Advice Date : 05/11/2021

Deposit Amount : \$483.24

Pay the amount : **FOUR HUNDRED EIGHTY THREE DOLLARS AND 24 CENTS**

To the account of :

Bank Routing No. Bank Acct Number Deposit Amount

JEHU J JIMENEZ

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), APPLEBEES willfully failed to maintain accurate payroll records for Mr. Jimenez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, APPLEBEES failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Jimenez and other aggrieved employees, in violation of section 1198. Also, as stated, APPLEBEES engaged in a company-wide practice and/or policy of falsifying Mr. Jimenez’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Jimenez and other aggrieved employees. Furthermore, in light of APPLEBEES failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, APPLEBEES kept no records of meal start and end times for second meal periods in violation of section 1198.

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

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, APPLEBEES willfully failed to pay Mr. Jimenez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . ." (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he "wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,"

- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, APPLEBEES had an agreement with a payroll service provider for the issuance of payroll debit cards to employees, including Mr. Jimenez and other aggrieved employees, to discharge its wage payment obligations to its employees. Upon information and belief, APPLEBEES’s payroll debit card program was not voluntary or optional to Mr. Jimenez and other aggrieved employees. APPLEBEES had a practice and/or policy of automatically issuing payroll debit cards to Mr. Jimenez and other aggrieved employees without giving them the option to elect their form of payment for their wages. Mr. Jimenez and other aggrieved employees also received their final wages on a payroll debit card without a choice of an alternative method, including a written check.

Moreover, under APPLEBEES’s payroll debit program, on information and belief, APPLEBEES did not permit other aggrieved employees to withdraw their entire final wages in at least one transaction without incurring a fee. Additionally, on information and belief, other aggrieved employees encountered \$2.00 ATM fees each time they utilized an ATM to withdraw funds from the payroll debit card in addition to a multitude of other transaction fees that APPLEBEES did not disclose or properly inform other aggrieved employees of at the time of issuance of payroll cards, including but not limited to: foreign transaction and currency conversion fees in the amount of 2.5% of transaction amount, card replacement fees in the amount of \$3.00 - \$9.00, and secondary card request fees in the amount of \$1.50 - \$4.50 and custom card request in the amount of \$4.95 - \$7.95, among other undisclosed fees. Consequently, these undisclosed payroll debit card fees resulted in a discount in pay to other aggrieved employees. In sum, APPLEBEES’s payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for other aggrieved employees to access their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. APPLEBEES's payroll card program is inconsistent with this policy. Because APPLEBEES's company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Jimenez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, APPLEBEES unlawfully deducted a portion of wages previously paid to Mr. Jimenez and other aggrieved employees in violation of California Labor Code section 221.

APPLEBEES systematically, and on a company-wide basis, provided Mr. Jimenez and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under APPLEBEES's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Jimenez and other aggrieved employees resulted in a discount of their wages.

APPLEBEES's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, APPLEBEES willfully and systematically issued payroll debit cards to Mr. Jimenez and other aggrieved employees. The payroll debit cards discounted the wages of other aggrieved employees by charging various fees in connection with the use of the payroll debit cards. APPLEBEES's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, APPLEBEES acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, APPLEBEES paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

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

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

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

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring APPLEBEES into compliance with California’s resting facilities requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

APPLEBEES’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Jimenez and other aggrieved employees during lulls in operation. APPLEBEES could have provided Mr. Jimenez and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

APPLEBEES did not provide Mr. Jimenez and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Jimenez and other aggrieved employees engaged in duties in which the nature of the work required standing, APPLEBEES denied them the use of seats nearby during lulls in their work duties. Moreover, APPLEBEES did not inform Mr. Jimenez and other aggrieved employees of their rights to a seat or stool under California law.

As a result of APPLEBEES’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Jimenez and other aggrieved employees were forced to stand during shifts and denied seats. APPLEBEES failure to provide suitable seating to Mr. Jimenez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring APPLEBEES into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of

inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

APPLEBEES violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because APPLEBEES failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. As stated, APPLEBEES had a company-wide “on-call” policy, whereby it scheduled Mr. Jimenez and other aggrieved employees to work “on-call,” or on standby. When scheduled for a “on-call” or standby shift, Mr. Jimenez and other aggrieved employees regularly presented themselves as ready for work one (1) hour prior to their scheduled standby shift and would await instructions on whether to report to the restaurant, but were ultimately told not to come in. For example, on several occasions Mr. Jimenez waited at home during his scheduled standby or on-call shifts as required by APPLEBEES’s “on-call” policy. When this occurred, APPLEBEES did not pay Mr. Jimenez and other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject to APPLEBEES’s “on-call” policy and were ultimately not called. Accordingly, Mr. Jimenez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, APPLEBEES, on a company-wide basis, required that other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. Specifically, APPLEBEES required other aggrieved employees to use personal cellular phones for scheduling pursuant to its “on call” policy. Although APPLEBEES required other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, APPLEBEES failed to reimburse them for this cost.

Moreover, during the relevant time period, APPLEBEES, on a company-wide basis, forced Mr. Jimenez and other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, due to COVID-19, Mr. Jimenez was required to spend \$10.00 on face masks to wear at work, because APPLEBEES required face masks to be worn in its restaurants but did not provide them to employees. Although APPLEBEES required Mr. Jimenez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

APPLEBEES could have provided Mr. Jimenez and other aggrieved employees with the actual tools required for use on the job, including company phones, and tools, supplies and/or equipment such as face masks. Or, APPLEBEES could have reimbursed Mr. Jimenez and other aggrieved employees for their cost of their cellular phone usage, and tool, supply and/or equipment expenses. Instead, APPLEBEES passed these operating costs off onto Mr. Jimenez and other aggrieved employees. At all relevant times, Mr. Jimenez did not earn at least two (2) times the minimum wage.

Thus, APPLEBEES had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Jimenez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated, APPLEBEES failed to provide Mr. Jimenez and other aggrieved employees with personal protective equipment, such as face masks, to keep them safe in the workplace. Despite the fact that APPLEBEES required Mr. Jimenez and other aggrieved employees to wear certain personal protective equipment, including face masks, while engaged in their work-related duties, APPLEBEES failed to fully provide such reasonably necessary equipment to Mr. Jimenez and other aggrieved employees to keep them safe.

APPLEBEES's failure to provide Mr. Jimenez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Jimenez and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." APPLEBEES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Jimenez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Jimenez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Jimenez,

acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against APPLEBEES for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

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

Pre-Litigation Demand

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

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

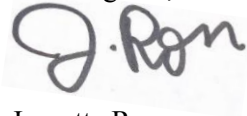
1. APPLEBEES shall pay Mr. Jimenez and all other aggrieved employees employed by APPLEBEES at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. APPLEBEES shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. APPLEBEES shall conduct a survey or interview all current and former aggrieved employees in California who worked for APPLEBEES in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses; tools, supplies, and/or equipment; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. APPLEBEES shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. APPLEBEES also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. APPLEBEES shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for APPLEBEES's benefit, including, but not limited to, costs of cellular phone expenses and tools, supplies, and/or equipment, as required by Labor Code section 2802.
6. APPLEBEES shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), unlawful deductions (Labor Code sections 221 and 224), and secret payment of lower wages (Labor Code section 223).

7. APPLEBEES shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. APPLEBEES shall provide Mr. Jimenez and all aggrieved employees employed by APPLEBEES at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. APPLEBEES shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
10. APPLEBEES shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. APPLEBEES shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
12. APPLEBEES shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. APPLEBEES shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Jezzette Ron

Copy: APPLE CORE ENTERPRISES, INC. (via U.S. Certified Mail); APPLEVALLEY, INC. (via U.S. Certified Mail); APPLE BMONT, INC. (via U.S. Certified Mail); APPECENTRO, INC. (via U.S. Certified Mail); APPLE CITY, INC. (via U.S. Certified Mail); APPLE PALM, INC. (via U.S. Certified Mail); APPLE QUINTA, INC. (via U.S. Certified Mail); APPEXICO, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7021 1970 0000 0191 2103



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
APPLE CORE ENTERPRISES, INC.
509 30TH AVE. NW
MINOT, ND 58703



9590 9402 1512 5362 2486 45

2. Article Number (Transfer from service label)

7021 1970 0000 0191 2103

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

APPLE CORE ENTERPRISES, INC.
509 30TH AVE. NW
MINOT, ND 58703

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT

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OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE CORE ENTERPRISES, INC.

Street and Apt. No. or PO Box No.
509 30TH AVE. NW

City, State, ZIP+4®
MINOT, ND 58703

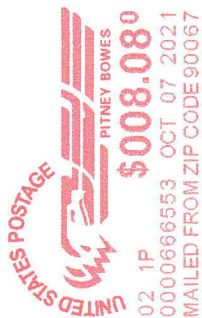
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Jimenez v. Apple
Core Enterprises, Inc.

tone
LAW APC
ury Park East, Ste 1000
ss. CA 90067



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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

APPLE CORE ENTERPRISES, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2486 07

2. Article Number (Transfer from service label)

7021 1970 0000 0191 2097

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

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7021 1970 0000 0191 2097

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PO BOX 969
MINOT, ND 58702

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OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.85 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE CORE ENTERPRISES, INC.

Street and Apt. No., or PO Box No.
PO BOX 969City, State, ZIP+4®
MINOT, ND 58702

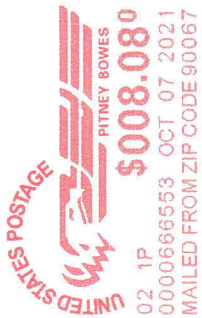
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark

Here
Jimenez v. Apple
Core Enterprises,
Inc.

one
AW APC
y Park East, Ste 1000
CA 90067



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

1. Article Addressed to:

APPLEVALLEY, INC.
509 30TH AVE. NW
MINOT, ND 58703



9590 9402 1512 5362 2485 91

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5806

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt



7017 0530 0000 8095 5806

APPLEVALLEY, INC.
509 30TH AVE. NW
MINOT, ND 58703

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Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLEVALLEY, INC.

509 30TH AVE. NW

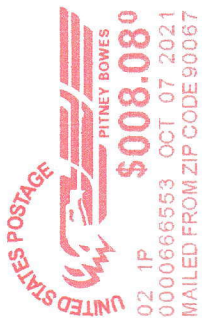
MINOT, ND 58703

Postmark Here

Diaz V. Applevalley, Inc.

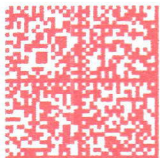
7017 0530 0000 8095 5806

Stone
LAW APC
1000
Park East, Ste 1000
s, CA 90067



PITNEY BOWES
\$008.08⁰

02 1P
0000666553 OCT 07 2021
MAILED FROM ZIP CODE 90067



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

1. Article Addressed to:

APPLEVALLEY, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2485 84

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5790

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5790

APPLEVALLEY, INC.
PO BOX 969
MINOT, ND 58702

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Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 4.63

Total Postage and Fees

\$ 8.08

Sent To

APPLEVALLEY, INC.

Street and Apt. No.

PO BOX 969

City, State, ZIP+4

MINOT, ND 58702

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

See Reverse for Instructions

tone

LAW APC

1000
Park East, Ste 1000
s, CA 90067



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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APPLE BMONT, INC.
509 30TH AVE NW
MINOT, ND 58703



9590 9402 1512 5362 2485 77

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5813

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5813

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MINOT, ND 58703

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Certified Mail Fee

\$ 3.66

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE BMONT, INC.

Street and Apt. No., 509 30TH AVE NW

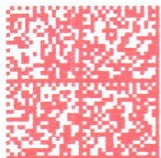
City, State, ZIP+4® MINOT, ND 58703

Postmark
HereJimenez v. Apple
Bmont, Inc.

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

See Reverse for Instructions

Stone
LAW APC
1000
Park East, Ste 1000
s, CA 90067



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1. Article Addressed to:
APPLE BMONT, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2485 60

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5820

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

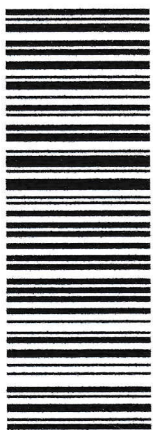
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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

Domestic Return Receipt

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Certified Mail Fee
\$ 3.60
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63
Total Postage and Fees
\$ 8.08

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APPLE BMONT, INC.

PO BOX 969
MINOT, ND 58702

City, State, ZIP+4®

Postmark
Here

Jimenez v. Apple
Bmont, Inc.

tone
LAW APC
ury Park East, Ste 1000
s, CA 90067

UNITED STATES POSTAGE
 PITNEY BOWES
 \$008.08
 02 1P
 0000666553 OCT 07 2021
 MAILED FROM ZIP CODE 90067



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

1. Article Addressed to:
 APPLECENRO, INC.
 509 30TH AVE. NW
 MINOT, ND 58703



9590 9402 1512 5362 2485 53

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5837

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

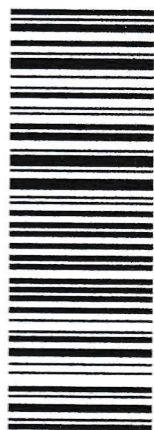
D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

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

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

Domestic Return Receipt



7017 0530 0000 8095 5837

APPLECENTRO, INC.
 509 30TH AVE. NW
 MINOT, ND 58703

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Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 6.63

Total Postage and Fees

\$ 8.08

Sent To

APPLECENTRO, INC.

Street and Apt. No., or PO Box No.

509 30TH AVE. NW

City, State, ZIP+4®

MINOT, ND 58703

Postmark
 Here

Jimenez V. Applecentro
 Inc.

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

See Reverse for Instructions

7017 0530 0000 8095 5837

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



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLECENTRO, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2485 46

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5783

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

- ☐ Yes
☐ No

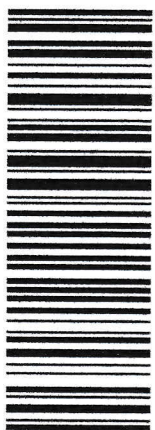
3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



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OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

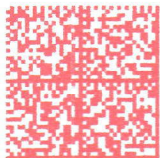
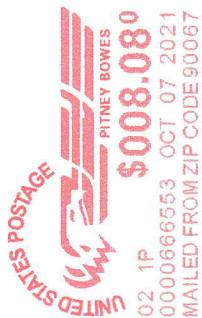
Sent To

APPLECENTRO, INC.
PO BOX 969
MINOT, ND 58702

**Postmark
Here**

Jimenez v. Applecentro
Inc.

one
LAW APC
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE CITY, INC.
509 30TH AVE NW
MINOT, ND 58703



9590 9402 1512 5362 2485 39

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5776

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

☐ Yes☐ No

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5776

APPLE CITY, INC.
509 30TH AVE NW
MINOT, ND 58703

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

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE CITY, INC.

Street and Apt. No.

509 30TH AVE NW

City, State, ZIP+4

MINOT, ND 58703

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

See Reverse for Instructions

Postmark
HereJimenez v. Apple
City, Inc.

one

LAW APC

1000
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE CITY, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2485 22

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5844

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

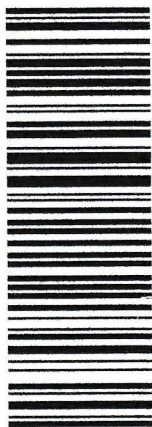
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5844

APPLE CITY, INC.
PO BOX 969
MINOT, ND 58702

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail OnlyFor delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.85 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE CITY, INC.

Street and Apt. No.

PO BOX 969

City, State, ZIP+4

MINOT, ND 58702

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

See Reverse for Instructions

Postmark
Here

Jimenez V.

Stone

LAW APC

1000
Park East, Ste 1000
s, CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE PALM, INC.
509 30TH AVE NW
MINOT, ND 58703



9590 9402 1512 5362 2485 15

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5769

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5769

APPLE PALM, INC.
509 30TH AVE NW
MINOT, ND 58703

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

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

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE PALM, INC.

Street and Apt. No., or PO Box No.

509 30TH AVE NW

City, State, ZIP+4®

MINOT, ND 58703

Postmark

Here

Jimenez v. Apple
Palm, Inc.

Stone

LAW APC

1000
Park East, Ste 1000
S, CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE PALM, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2485 08

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5752

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL



7017 0530 0000 8095 5752

APPLE PALM, INC.
PO BOX 969
MINOT, ND 58702

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

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE PALM, INC.

PO BOX 969

MINOT, ND 58702

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

Postmark

Here

Jimenez V.

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

See Reverse for Instructions

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE QUINTA, INC.
509 30TH AVE. NW
MINOT, ND 58703



9590 9402 1512 5362 2484 92

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5738

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

- ☐ Yes
☐ No

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5738

APPLE QUINTA, INC.
509 30TH AVE. NW
MINOT, ND 58703

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

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

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE QUINTA, INC.
509 30TH AVE. NW
MINOT, ND 58703

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

See Reverse for Instructions

Postmark
HereJimenez v. Apple
Quinta, Inc.

one
LAW APC
1000
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE QUINTA, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2484 85

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5745

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5745

APPLE QUINTA, INC.
PO BOX 969
MINOT, ND 58702

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail OnlyFor delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLE QUINTA, INC.

Street and Apt. No.

PO BOX 969

City, State, ZIP+4

MINOT, ND 58702

Postmark
Here

Jimenez V.

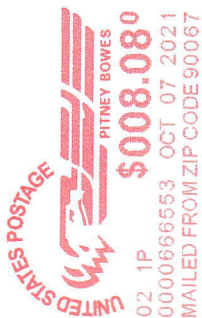
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

one

LAW APC

1000
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLEXICO, INC.
509 30TH AVE NW
MINOT, ND 58703



9590 9402 1512 5362 2484 78

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5721

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

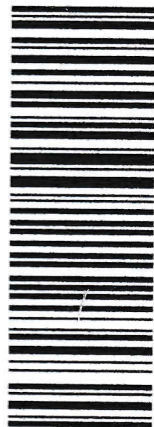
D. Is delivery address different from item 1?

☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

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

Domestic Return Receipt



7017 0530 0000 8095 5721

APPLEXICO, INC.
509 30TH AVE NW
MINOT, ND 58703

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

\$ 3.60

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

☒ Return Receipt (hardcopy) \$ 2.85☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLEXICO, INC.

Street and Apt. No., or PO Box No.
509 30TH AVE NWCity, State, ZIP+4®
MINOT, ND 58703

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

See Reverse for Instructions

Postmark
HereJimenez v. Applexico
Inc.

Stone
LAW APC
1000
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLEXICO, INC.
PO BOX 969
MINOT, ND 58702



9590 9402 1512 5362 2484 61

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5714

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

- ☐ Yes
☐ No

3. Service Type

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

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

Domestic Return Receipt

CERTIFIED MAIL®



7017 0530 0000 8095 5714

APPLEXICO, INC.
PO BOX 969
MINOT, ND 58702

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

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

Certified Mail Fee

\$ 3.60

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

- ☒ Return Receipt (hardcopy) \$ 2.85
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

APPLEXICO, INC.

Street and Apt. No., or PO Box No.
PO BOX 969City, State, ZIP+4®
MINOT, ND 58702

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

See Reverse for Instructions

Postmark
HereJimenez v. Applexico
Inc.

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

APPLE CITY, INC.
509 30TH AVE NW
MINOT, ND 58703



9590 9402 1512 5362 2485 39

2. Article Number (Transfer from service label)

7017 0530 0000 8095 5776

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Larry Hinds

C. Date of Delivery

10/26/01

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

3. Service Type

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

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

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

Domestic Return Receipt