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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

KARLA GARCIA, 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"),

Plaintiff,

vs.

AMERICAN MEALS, INC., a California
corporation; RIPON RESTAURANT
GROUP, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UAT-2021-11700

**FIRST AMENDED 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, Section 11050 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (10) 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 Karla Garcia, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 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 non-exempt, hourly
9 paid employees 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 damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of Information
5 forms with the California Secretary of State designating a principal place of business in
6 Stockton, County of San Joaquin, in accordance with California Corporations Code section
7 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
8 employ persons in this county, and thus a substantial portion of the transactions and occurrences
9 related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Karla Garcia is a resident of Vacaville, in Solano County, California.
12 Defendants employed Plaintiff as an hourly paid, non-exempt Server and Assistant Manager
13 from approximately June 2019 to May 2021. Plaintiff worked for Defendants at their Denny's
14 restaurant location in Vacaville, California. During her employment, Plaintiff typically worked
15 eight (8) to twelve (12) hours or more per day, and five (5) to six (6) days per week. Plaintiff's
16 primary job duties included, without limitation, counting money, preparing take-out orders, and
17 cleaning and maintaining the premises.

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

22 6. RIPON RESTAURANT GROUP was and is, upon information and belief, a
23 California corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county, the State of California, or the various states of the United
25 States of America.

26 7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
27 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
28 complaint and serve such fictitiously named Defendants once their names and capacities

1 become known.

2 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
3 were the partners, agents, owners, or managers of AMERICAN MEALS, INC. and RIPON
4 RESTAURANT GROUP, at all relevant times.

5 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein was performed by, or is attributable to, AMERICAN MEALS,
7 INC.; RIPON RESTAURANT GROUP; and/or DOES 1 through 10 (collectively, “Defendants”
8 or “AMERICAN MEALS”), each acting as the agent, employee, alter ego, and/or joint venturer
9 of, or working in concert with, each of the other co-Defendants and was acting within the course
10 and scope of such agency, employment, joint venture, or concerted activity with legal authority
11 to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
12 represent, the official policy of Defendants.

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

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

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

1 class members under the law.

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

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

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

23 15. AMERICAN MEALS, INC.; RIPON RESTAURANT GROUP; and DOES 1
24 through 10 are therefore alter egos of each other.

25 16. Adherence to the fiction of the separate existence of Defendants would permit an
26 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
27 liability for the wrongful acts committed by them the name AMERICAN MEALS.

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17. Plaintiff further alleges, upon information and belief, that Defendants AMERICAN MEALS, INC. and RIPON RESTAURANT GROUP are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), AMERICAN MEALS, INC. and RIPON RESTAURANT GROUP share the same entity and entity mailing address of "3439 BROOKSIDE ROAD, SUITE 103, STOCKTON, CA 95219";

(b) According to their most recent “Statement of Information” forms filed with the California Secretary of State, AMERICAN MEALS, INC. and RIPON RESTAURANT GROUP share the same Agent for Service of Process, Ray Hussain;

(c) Based on the Statement of Information forms filed with the California Secretary of State, AMERICAN MEALS, INC. and RIPON RESTAURANT GROUP share the same officers and/or directors, including, but not limited to, Ray Hussain, who serves as Chief Financial Officer of AMERICAN MEALS, INC. and as Chief Executive Officer, Chief Financial Officer, and Director of RIPON RESTAURANT GROUP; and

(d) On information and belief, AMERICAN MEALS, INC. and RIPON RESTAURANT GROUP utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants operate approximately eight (8) Denny's restaurant franchise locations throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Stockton, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping

1 policies and rest period policies, to employees throughout California.

2 19. In particular, Plaintiff and class members, on information and belief, received
3 the same standardized documents and/or written policies. Upon information and belief, the
4 usage of standardized documents and/or written policies, including new-hire documents,
5 indicate that Defendants dictated policies at the corporate level and implemented them
6 company-wide, regardless of their employees' assigned locations or positions.

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

15 21. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

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

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

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

27 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive at least minimum

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

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

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

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

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

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1 30. 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 period premiums, and/or reporting time pay,
6 within permissible time periods.

7 31. 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 period premiums, and/or reporting time pay within permissible time
12 periods.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive all reporting time
15 pay when Defendants required Plaintiff and class members to report to work but were put to
16 work for less than half of their regular scheduled shift. In violation of the California Labor
17 Code, Plaintiff and class members were not paid all reporting time pay.

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive full reimbursement
20 for all business-related expenses and costs they incurred during the course and scope of their
21 employment and that they did not receive full reimbursement of applicable business-related
22 expenses and costs incurred.

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

PAGA REPRESENTATIVE ALLEGATIONS

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

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

37. 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.

38. 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 or representative shall give written notice by online filing with 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 violation.
- (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 notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five

(65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

40. On November 19, 2021, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA

1 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
2 PAGA Case Number LWDA-CM-853018-21. A true and correct copy of Plaintiff's written
3 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

4 41. On December 1, 2021, Plaintiff filed an amended written notice by online filing
5 to the LWDA and by certified mail to Defendants of the specific provisions of the California
6 Labor Code alleged to have been violated, supplementing and clarifying the facts and theories
7 to support the alleged violations set forth in her original LWDA notice, in accordance with
8 California Labor Code section 2699.3. A true and correct copy of Plaintiff's amended written
9 notice to the LWDA and Defendants is attached hereto as "Exhibit 2."

10 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff
11 sent the initial notice described above to the LWDA, and the LWDA has not responded that it
12 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

13 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
16 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

46. 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.

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

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action on her 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.

49. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

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

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint¹ until the date of trial (“Class”).

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

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

52. Members of the Class and Subclass are referred to herein as “class members.”

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

¹ Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

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

- 3 (a) Whether Defendants required Plaintiff and class members to work over
4 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
5 hours per week and failed to pay all legally required overtime
6 compensation to Plaintiff and class members;
- 7 (b) Whether Defendants failed to pay Plaintiff and class members at least
8 minimum wages for all hours worked;
- 9 (c) Whether Defendants failed to provide Plaintiff and class members meal
10 periods;
- 11 (d) Whether Defendants failed to authorize and permit Plaintiff and class
12 members to take rest periods;
- 13 (e) Whether Defendants provided Plaintiff and class members with complete
14 and accurate wage statements as required by California Labor Code
15 section 226(a);
- 16 (f) Whether Defendants maintained accurate payroll records as required by
17 California Labor Code section 1174(d);
- 18 (g) Whether Defendants failed to pay earned overtime wages, minimum
19 wages, meal and rest period premiums, and/or reporting time pay due to
20 Plaintiff and class members upon their discharge;
- 21 (h) Whether Defendants failed to timely pay overtime wages, minimum
22 wages, meal and rest period premiums, and/or reporting time pay to
23 Plaintiff and class members during their employment;
- 24 (i) Whether Defendants failed to pay Plaintiff and class members for the
25 costs of mandatory physical examinations and/or drug testing;
- 26 (j) Whether Defendants required Plaintiff and class members to report to
27 work, but failed to provide them with work or provided them with less
28 than half their scheduled day's work, without properly compensating

1 them as required by California Code of Regulations, Title 8, section
2 11050, subsection 5;

3 (k) Whether Defendants failed to reimburse Plaintiff and class members for
4 necessary and required business-related expenditures and/or losses
5 incurred by them in the scope of their employment;

6 (l) Whether Defendants engaged in unlawful and unfair business practices in
7 violation of California Business & Professions Code sections 17200, *et*
8 *seq.*; and

9 (m) The appropriate amount of damages, restitution, or monetary penalties
10 resulting from Defendants' violations of California law.

11 55. There is a well-defined community of interest in the litigation and the class
12 members are readily ascertainable:

13 (a) Numerosity: The class members are so numerous that joinder of all
14 members would be unfeasible and impractical. The membership of the
15 entire class is unknown to Plaintiff at this time; however, the class is
16 estimated to be greater than one hundred (100) individuals and the
17 identity of such membership is readily ascertainable by inspection of
18 Defendants' employment records.

19 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
20 the interests of each class member with whom she has a well-defined
21 community of interest, and Plaintiff's claims (or defenses, if any) are
22 typical of all class members as demonstrated herein.

23 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
24 the interests of each class member with whom she has a well-defined
25 community of interest and typicality of claims, as demonstrated herein.
26 Plaintiff acknowledges that she has an obligation to make known to the
27 Court any relationship, conflicts or differences with any class member.
28 Plaintiff's attorneys, the proposed class counsel, are versed in the rules

governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

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

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

57. 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

1 be the . . . standard conditions of labor for employees. The employment of any employee . . .
2 under conditions of labor prohibited by the order is unlawful.”

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

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

11 60. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
13 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
14 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
15 employee, including shift differential pay, nondiscretionary bonuses and incentive pay.

16 61. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
19 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
20 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
21 the seventh (7th) day of work.

22 62. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
24 members were not paid overtime premiums for all of the hours they worked in excess of eight
25 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
26 in a week, because all hours worked were not recorded.

27 63. First, during the relevant period, Defendants implemented, on a company-wide
28 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory

COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to her shift, Plaintiff was required to spend up to five (5) minutes per instance waiting and then undergoing a mandatory temperature check and filling out a health screening form, before being permitted to clock in for her shift. Even though Defendants required these health screenings, Defendants did not provide Plaintiff and class members a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

64. Second, during the relevant period, Defendants had, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and class members from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with Defendants' use of labor budgets and assignment of heavy workloads, led Plaintiff and class members to work off-the-clock before their scheduled shift times. For example, at least once a month for about 30 minutes each instance, Plaintiff was required to travel to a market to pick up supplies and ingredients, such as vegetables, lemons, and cups, on her way to work and prior to clocking in for the start of her shift. As a further example, about once a week, when Plaintiff arrived early to the restaurant, Defendants' management required her to start working immediately and before she was able to clock in for the start of her shift because the restaurant was busy. Plaintiff would work for up to 15 minutes but was prevented from clocking in before her scheduled shift start-time. Additionally, Plaintiff was occasionally called into the manager's office for about five (5) minutes per instance to meet with the manager prior to clocking in for the start of her shift. Thus, Defendants failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Plaintiff and class members received no compensation for this pre-shift, off-the-clock time spent working.

65. Moreover, Defendants' company-wide policy of limiting overtime also forced Plaintiff and class members to work after clocking out at the end of their scheduled shifts and/or on days off. For example, at least 2-3 times during Plaintiff's employment, she was pressured to report to the restaurant and help set up outdoor seating tents for about two (2) hours on her

1 days off. As another example, on 2-3 occasions, Plaintiff was required to complete 30-minute
2 online trainings off-the-clock while at home. Further, at least 3-4 times per week, for about five
3 (5) minutes per instance, Plaintiff's managers would call her on her personal mobile phone on
4 her off-days to discuss work-related matters, such as what occurred at the restaurant during her
5 shift. This off-the-clock work could have been recorded by Defendants, but they refused to do
6 so to avoid payment of additional wages to Plaintiff and class members. Thus, Defendants
7 failed to track all of the time that employees spent performing work-related tasks after clocking
8 out at the end of their shifts or on days off, and Plaintiff and class members received no
9 compensation for this time.

10 66. Third, as stated, Defendants had, and continue to have, a company-wide policy
11 of strictly staffing their restaurant locations based on the labor hours allocated by each location's
12 labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll
13 allocation, combined with the assignment of heavy workloads, has resulted in chronic
14 understaffing and a lack of adequate meal period coverage, because there were too few
15 employees on duty to handle the workload. Moreover, Defendants have a practice of failing to
16 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
17 their duties for compliant meal periods. As a result of this inadequate meal period coverage,
18 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
19 during shifts when they were entitled to receive a meal period. For example, Plaintiff often
20 missed her meal periods entirely when she was the manager on duty because she was pressured
21 to continue working and oversee the restaurant operations. Further, because Defendants
22 frowned upon employees accruing meal period penalties, Defendants' management pressured
23 employees to clock out for meal periods to reflect compliant meal periods and/or adjusted
24 employee time records, regardless of whether they had received a compliant meal period or not,
25 in order to strictly limit meal penalties that would need to be paid by Defendants. Consequently,
26 Plaintiff and class members performed work during meal periods for which they were not paid.

27 67. Fourth, in conjunction with understaffing their restaurants, Defendants had a
28 requirement that a managerial employee be present on the floor at all times and prohibited

1 managers from leaving the premises unless another manager was also on duty, resulting in a
2 lack of meal period coverage for managerial employees. At the same time, the labor budgets
3 Defendants implemented did not always allow for more than one manager to be on the schedule
4 at all times. As a result, Plaintiff and class members were sometimes the only managers on
5 duty, and were expected to supervise the restaurant and respond to customer complaints at all
6 times. Because managerial employees were effectively prohibited from leaving Defendants'
7 premises for meal periods without coverage, and because there were too few employees and
8 other managers on duty to handle the workload and attend to customers, Plaintiff and class
9 members were denied uninterrupted 30-minute meal periods, and were required to work through
10 and/or to return early from meal periods.

11 68. Fifth, in order to prevent Plaintiff and class members from incurring meal period
12 penalties that Defendants would otherwise owe, Defendants' timekeeping system automatically
13 locked out employees at the fifth hour of their shift (if they had not yet taken their meal period)
14 by locking the register that employees used to input customer orders and forced employees to
15 clock out for their meal period in order to reflect compliant meal periods. Additionally,
16 Defendants' timekeeping system prevented Plaintiff and class members from recording all hours
17 worked when their meal periods were shortened or interrupted, because the system locked out
18 Plaintiff and class members once they clocked out for a meal period, and would not permit them
19 to clock back in from a meal period until 30 minutes had elapsed without managerial clearance.
20 Thus, Defendants' timekeeping system further prevented Plaintiff and class members from
21 recording all hours worked when their meal periods were shortened or interrupted.

22 69. Sixth, during the relevant period, Defendants had a company-wide "on-call"
23 policy, whereby they scheduled Plaintiff and class members to work "on-call," or on standby.
24 These "on-call" shifts worked to Defendants' benefit and to the detriment of Plaintiff and class
25 members. By utilizing "on-call" shifts, Defendants received the benefit of being able to
26 maximize revenue by having a standby workforce they could choose to utilize or not, depending
27 on restaurant traffic and sales metrics, without incurring the cost of compensating employees
28 who show up to work and work a full or partial scheduled day's work.

1 70. When scheduled for an “on-call” or standby shift, Plaintiff and class members
2 were required to wait for the restaurant to call them 1-2 hours prior to their scheduled standby
3 shift; sometimes Plaintiff would call in herself to confirm if she was required to report to work
4 that day. Plaintiff and class members were engaged to wait and could not engage in personal
5 activities as they had to be ready to travel to their respective restaurant locations on short notice
6 and work their standby shift. When scheduled to be “on-call” for a standby shift, Plaintiff and
7 class members were controlled by Defendants because they were forced to put their lives on
8 hold and could not use that time freely for their own purposes. For example, Plaintiff refrained
9 from making plans altogether while “on-call” for a standby shift because she knew that she had
10 to drop whatever she was doing at a moment’s notice if she was instructed to work her standby
11 shift. Defendants did not pay Plaintiff and class members for the time they spent waiting to
12 hear whether they needed to report for work at their restaurant locations on days they ultimately
13 were not called in. Defendants also did not compensate Plaintiff and class members for the time
14 they spent calling in to see if they were needed.

15 71. Defendants knew or should have known that as a result of these company-wide
16 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
17 the-clock before and after their shifts and during meal periods, and were suffered or permitted
18 to perform work for which they were not paid. Because Plaintiff and class members worked
19 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
20 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
21 not paid overtime wages for all of the overtime hours they actually worked.

22 72. Defendants’ failure to pay Plaintiff and class members the balance of overtime
23 compensation as required by California law, violates the provisions of California Labor Code
24 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
25 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
26 and attorneys’ fees.

27 ///

28 ///

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less 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”).

75. First, as stated above, due to Defendants’ mandated pre-shift COVID-19 temperature checks and/or health screenings, Plaintiff and class members performed work off-the-clock before their scheduled shifts, because Defendants failed to provide Plaintiff and class members with any mechanism to record the time they spent completing the mandated health screenings.

76. Second, during the relevant time period, as a result of Defendants’ policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled shift start and end times to complete their tasks, such as traveling to pick up supplies, speaking with management about work-related matters, attending to a rush of customers prior to clocking in, and setting up tents for outdoor seating areas. However, Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and class members received no compensation for this time.

77. Third, as set forth above, due to Defendants’ company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods,

1 subsequent lack of meal period coverage, and/or policy requiring managerial employees to stay
2 on or near the restaurant premises during meal periods, Plaintiff and class members were
3 impeded from taking all uninterrupted meal periods to which they were entitled and were
4 required to work off-the-clock. Further, to limit the meal penalties that Defendants would
5 otherwise owe, Defendants pressured Plaintiff and class members to clock out for meal periods
6 and/or adjusted employee time records to reflect compliant meal periods, but required them to
7 continue working, time for which they were not paid. Moreover, as set forth above, in order to
8 prevent employees from accruing meal period penalties, Defendants' timekeeping system
9 forced employees to clock out by the fifth hour of their shift to reflect compliant meal periods
10 but management pressured employees to continue working, time for which they were not paid.
11 Also, as set forth above, Defendants systematically failed to pay Plaintiff and class members
12 for actual hours worked during unpaid meal periods, because Defendants' timekeeping system
13 locked out Plaintiff and class members for 30 minutes when they clocked out for a meal period
14 and would not permit them to clock back in from a meal period until 30 minutes had elapsed
15 without managerial clearance.

16 78. Fourth, as stated above, Defendants had a company-wide "on-call" policy,
17 whereby they required Plaintiff and class members to wait to be called by Defendants when
18 scheduled for "on-call" or standby shifts. However, Defendants did not pay Plaintiff and class
19 members at least minimum wages for the time they spent calling in or waiting to see if they
20 were needed at the restaurant.

21 79. Defendants did not pay minimum wages for all hours worked by Plaintiff and
22 class members. To the extent that these off-the-clock hours did not qualify for overtime
23 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
24 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

25 80. Defendants' failure to pay Plaintiff and class members minimum wages violates
26 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
27 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
28 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 **THIRD CAUSE OF ACTION**

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

3 **Violations**

4 **(Against all Defendants)**

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

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

14 83. At all relevant times herein set forth, California Labor Code sections 226.7,
15 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
16 meal period mandated by an applicable order of the IWC.

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

23 85. During the relevant time period, Defendants had, and continue to have, a
24 company-wide policy and/or practice of understaffing locations due to labor budgeting and/or
25 limited payroll allocation, which, combined with the assignment of heavy workloads, and
26 failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented
27 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
28 were entitled. In conjunction with understaffing their restaurants, as stated, Defendants had a

1 requirement that a managerial employee be present on the restaurant floor at all times, but
2 Defendants' labor budgets did not always allow for more than one manager to be on the schedule
3 at all times. As a result, Plaintiff and class members were sometimes the only managers on
4 duty, and would have their meal periods interrupted or would work through them in order to
5 assist their coworkers and customers.

6 86. As a result, Plaintiff and class members had to work through all or part of their
7 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
8 before taking meal periods. For example, as stated, Plaintiff often missed her meal periods
9 entirely when she was the manager on duty because she was pressured to continue working and
10 oversee the restaurant operations. Moreover, because Defendants frowned upon employees
11 accruing meal period penalties, Defendants' management pressured Plaintiff and class members
12 to clock out for meal periods and/or would adjust their time records to reflect compliant meal
13 periods, regardless of whether they had received a compliant meal period or not, in order to
14 strictly limit meal penalties that would need to be paid by Defendants.

15 87. Moreover, Defendants did not provide Plaintiff and class members with second
16 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example,
17 during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day at least
18 four (4) days per week and never took a second meal period. Plaintiff and class members did
19 not sign valid meal period waivers on days that they were entitled to meal periods and were not
20 relieved of all duties.

21 88. Moreover, Defendants had a company-wide policy of requiring all newly hired
22 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
23 the position that non-exempt, hourly paid employees had waived their rights to first meal
24 periods for the entirety of their employment and, on that basis, did not provide them with all
25 meal periods to which they were entitled. Specifically, Defendants' meal period waiver form
26 requires employees to provide Defendants with written notice should they wish to revoke the
27 waiver. Defendants' presumption that first meal periods would not be provided for shifts in
28 excess of five (5) hours but less than six (6) hours due to blanket meal period waivers signed at

1 or near the time of hire, and imposition on employees to revoke the waivers in writing,
2 discouraged and impeded Plaintiff and class members from taking all meal periods to which
3 they were entitled.

4 89. Furthermore, an employer's obligation to provide a meal period is only
5 "triggered" when the employer "employs an employee for a work period of more than five hours
6 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
7 work for a full five hours, its meal break obligation is triggered").

8 [A]fter the meal break obligation is triggered . . . an employer is put to a
9 choice: it must (1) afford an off-duty meal period; (2) consent to a
10 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
11 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

12 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
13 require employees to sign meal period waivers in advance (as opposed to on a specific work
14 day) renders them invalid and unenforceable, because Defendants' obligation to provide
15 Plaintiff and class members with meal periods did not arise until Defendants had employed them
16 for a full five (5) hours.

17 90. At all times herein mentioned, Defendants knew or should have known that, as a
18 result of these policies, Plaintiff and class members were prevented from being relieved of all
19 duties and required to perform some of their assigned duties during meal periods. Defendants
20 further knew or should have known that Defendants did not pay Plaintiff and class members all
21 meal period premiums when meal periods were late, missed, shortened, or interrupted.

22 91. As set forth above, to prevent Plaintiff and class members from incurring meal
23 period penalties that Defendants would otherwise owe, Defendants' timekeeping system
24 automatically locked out employees at the fifth hour of their shift (if they had not yet taken their
25 meal period) by locking the register that employees used to input customer orders and forced
26 employees to clock out for their meal period while they continued to work in order to reflect
27 compliant meal periods. Additionally, Defendants' timekeeping system locked out Plaintiff and
28 class members once they clocked out for a meal period, and would not permit them to clock

back in from a meal period until 30 minutes had elapsed without managerial clearance even when their meal periods were shortened or interrupted.

92. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Plaintiff and class members have not received all premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

93. 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)

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

95. 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.

96. 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.

97. 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

1 order of the California IWC. To comply with its obligation to authorize and permit rest periods
2 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
3 must “relinquish any control over how employees spend their break time, and relieve their
4 employees of all duties—including the obligation that an employee remain on call. A rest
5 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
6 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
7 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
8 additional hour of pay at their regular rates of pay for each work day that a required rest period
9 was not authorized and permitted.

10 98. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
12 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide use
13 of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy
14 workloads resulted in a lack of rest period coverage and prevented Plaintiff and class members
15 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
16 to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period
17 coverage, further led to Plaintiff and class members not being authorized and permitted to take
18 rest periods.

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

26 100. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

1 throughout her employment, Plaintiff had to forego her rest periods entirely during each shift
2 because the restaurant was busy, did not have coverage, and there was an expectation for all
3 employees to work through their rest periods.

4 101. Defendants have also engaged in a systematic, company-wide practice and/or
5 policy of not paying rest period premiums owed when rest periods are not authorized and
6 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
7 premium pay for all missed rest periods.

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

12 **FIFTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 14 **Statements and Failure to Maintain Accurate Payroll Records** 15 **(Against all Defendants)**

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

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

23 105. At all relevant times, Defendants have knowingly and intentionally provided
24 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
25 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
26 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
27 applicable hourly rates in effect during the pay period, including overtime rates of pay, and the
28 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated

1 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

11 107. The wage statement deficiencies also include, without limitation, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
13 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
14 which employees were paid; failing to list the name of the employee and only the last four digits
15 of his or her social security number or an employee identification number other than a social
16 security number; failing to list the name and address of the legal entity that is the employer;
17 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
18 the-clock. In addition, Defendants failed to provide Plaintiff and class members the option to
19 elect to receive hard copies of their wage statements at any time and/or failed to provide them
20 with the ability to easily access the information and convert the electronic wage statements into
21 hard copies at no expense to them.

22 108. California Labor Code section 1174(d) provides that “[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . .” At all relevant times, 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.

109. 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. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period start and stop times for Plaintiff and Subclass members, in violation of section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and Subclass members’ 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 Plaintiff and Subclass members. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

110. 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.

SIXTH CAUSE OF ACTION

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

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

112. 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.

113. 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.

114. 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.

115. 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)

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

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

4 118. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed. Labor Code section 204 further provides that
9 all wages earned by any person in any employment between the sixteenth (16th) and the last
10 day, inclusive, of any calendar month, other than those wages due upon termination of an
11 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
12 month.

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

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

23 121. Defendants' failure to pay Plaintiff and class members all wages due violates
24 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
25 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

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

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

12 124. The applicable IWC wage order, California Code of Regulations, Title 8, section
13 11050(5)(A), provides that “[e]ach workday an employee is required to report for work and
14 does report, but is not put to work or is furnished less than half said employee’s usual or
15 scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work,
16 but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s
17 regular rate of pay, which shall not be less than the minimum wage.”

18 125. During the relevant time period, Defendants violated California Labor Code
19 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
20 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
21 work for their scheduled shift but were put to work for less than half of the regularly scheduled
22 day’s work.

23 126. As stated, Defendants had a company-wide “on-call” policy, whereby they
24 scheduled Plaintiff and class members to work “on-call,” or on standby. When scheduled for a
25 “on-call” or standby shift, Plaintiff and class members regularly presented themselves as ready
26 for work by waiting for the restaurant to call them before their scheduled standby shift or by
27 calling into the restaurant themselves prior to their scheduled standby shift and would await
28 instructions on whether to report to the restaurant. When this occurred, Defendants did not pay

1 Plaintiff and class members for at least half of their scheduled day's work or the minimum
2 reporting time pay when they were subject to Defendants' "on-call" policy and were ultimately
3 not called.

4 127. Defendants also had a company-wide practice of sending Plaintiff and class
5 members home early from their shifts, including before they had worked at least half of their
6 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
7 For example, when scheduled to work an eight (8) hour shift, Defendants' managers sent
8 Plaintiff home two (2) hours after the start of her shift because business was slow. When this
9 occurred, Defendants did not pay Plaintiff and class members for at least half of their scheduled
10 day's work or the minimum reporting time pay.

11 128. Accordingly, Plaintiff and class members were not properly compensated with
12 reporting time pay in violation of California Labor Code section 1198 and California Code of
13 Regulations Title 8, section 11150(5)(A).

14 **NINTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 16 **(Against all Defendants)**

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

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

1 131. First, during the relevant time period, Defendants, on a company-wide basis,
2 required that Plaintiff and class members use their own personal mobile devices, including, but
3 not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
4 reimburse them for the costs of their work-related mobile device expenses. For example,
5 Plaintiff and class members would be contacted on their off-days on their personal mobile
6 devices by their managers and/or supervisors regarding scheduling, conducting video training
7 conferences, and other work-related matters. Plaintiff spent about 20 minutes per week using
8 her personal cellular phone in connection with carrying out her employee duties. In addition,
9 Defendants required that Plaintiff use her personal cellular phone to check the company's
10 website for specials and communicate with UberEats, DoorDash, and other meal delivery
11 services regarding to-go orders during her shifts. Although Defendants required Plaintiff and
12 class members to utilize their personal mobile devices to carry out their work-related
13 responsibilities, Defendants failed to reimburse them for this cost.

14 132. Second, during the relevant time period, Defendants, on a company-wide basis,
15 required that Plaintiff and class members use their own personal vehicles to run company
16 errands. For example, at least once a month during the relevant time period, Plaintiff was
17 required to use her personal vehicle and drive to pick up supplies from a market on her way to
18 work. Additionally, during the relevant time period, Plaintiff was required to use her personal
19 vehicle and run company errands during her shift; for example, at least four (4) times per week
20 Plaintiff was required to drive to a nearby gas station to purchase propane tanks. On average,
21 Plaintiff estimates driving approximately 50 miles per month to run company errands on and
22 off-the-clock. Although Defendants required Plaintiff and class members to utilize their
23 personal vehicles to carry out their work-related responsibilities, Defendants failed to reimburse
24 them for their mileage or travel expenses.

25 133. Third, during the relevant time period, Defendants required Plaintiff and class
26 members to purchase supplies and equipment necessary for the performance of their duties, but
27 failed to reimburse them for their out-of-pocket costs. For example, Plaintiff spent about \$500
28 over the course of her employment purchasing cleaning supplies, patio lights, decorative plants,

1 an umbrella, and other items for the restaurant because Defendants failed to provide her with
2 these necessary supplies which were required for the restaurant to operate properly and/or meet
3 management's expectations. Although Defendants required Plaintiff and class members to
4 purchase supplies and equipment to carry out their work-related responsibilities, Defendants
5 failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and
6 equipment.

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

22 135. Defendants could have provided Plaintiff and class members with the actual tools
23 for use on the job, such as company mobile devices, company vehicles, and supplies and
24 equipment, as well as an adequate number of uniform items or access to laundering services; or
25 Defendants could have reimbursed employees for the costs of their mobile device usage,
26 mileage, travel expenses, supply expenses, and laundering expenses or provided a uniform
27 maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and
28 class members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum

1 wage.

2 136. Defendants' company-wide policy and/or practice of passing on their operating
3 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
4 have intentionally and willfully failed to reimburse Plaintiff and other class members for
5 necessary business-related expenses and costs.

6 137. Plaintiff and class members are entitled to recover from Defendants their
7 business-related expenses incurred during the course and scope of their employment, plus
8 interest.

9 **TENTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 139. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
16 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
17 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
18 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
19 Code sections not found in section 2699.5, including sections 516 and 1182.12.

20 140. Defendants' conduct, as alleged herein, violates numerous sections of the
21 California Labor Code, including, but not limited to, the following:

- 22 (f) Violation of Labor Code sections 510 and 1198, and the applicable IWC
23 Wage Order for Defendants' failure to compensate Plaintiff and other
24 aggrieved employees with all required overtime pay, as alleged herein;
- 25 (g) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
26 and the applicable IWC Wage Order for Defendants' failure to
27 compensate Plaintiff and other aggrieved employees with at least
28 minimum wages for all hours worked, as alleged herein;

- 1 (h) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
2 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
3 and other aggrieved employees with meal periods, as alleged herein;
- 4 (i) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
5 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
6 and other aggrieved employees to take rest periods, as alleged herein;
- 7 (j) Violation of Labor Code sections 226(a) and 1198, and the applicable
8 IWC Wage Order for failure to provide accurate and complete wage
9 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 10 (k) Violation of Labor Code sections 1174(d) and 1198, and the applicable
11 IWC Wage Order for failure to maintain payroll records, as alleged
12 herein;
- 13 (l) Violation of Labor Code section 204 for failure to pay all earned wages
14 during employment to Plaintiff and other aggrieved employees, as alleged
15 herein;
- 16 (m) Violation of Labor Code sections 201 and 202 for failure to pay Plaintiff
17 and other aggrieved employees all earned wages upon termination, as
18 alleged herein;
- 19 (n) Violation of Labor Code section 1198 and the applicable IWC Wage
20 Order for failing to pay reporting time pay to Plaintiff and other aggrieved
21 employees, as alleged herein; and
- 22 (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
23 and other aggrieved employees for all business expenses necessarily
24 incurred, as alleged herein.

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1 **ELEVENTH CAUSE OF ACTION**

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

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

7 142. 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.

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

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

18 145. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198 and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
27 and 1198 and the applicable IWC Wage Order, as alleged herein;
- 28 (c) Failing to provide uninterrupted meal periods to Plaintiff and class

members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein; and

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

146. 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.

147. 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)**

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

7 149. 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.

10 150. 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.

15 151. 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.*)

25 152. 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.

153. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 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 statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

Class Certification

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

As to the First Cause of Action

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

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

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

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 applicable IWC Wage Order
7 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 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);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Sixth Cause of Action

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

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

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

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

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

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

As to the Seventh Cause of Action

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

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

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1 44. For statutory penalties according to proof pursuant to California Labor Code
2 section 210;

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

5 46. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

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

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

10 48. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by
12 failing to provide Plaintiff and class members with reporting time pay;

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

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

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

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

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

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

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

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

56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 and the applicable IWC Wage Order (by failing to pay reporting time pay); and 2802 (by failing to reimburse business expenses);

59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

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1 and payable;

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

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

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

9 73. For such other and further relief as the Court may deem equitable and
10 appropriate.
11

12 Dated: January 26, 2022

Respectfully submitted,

13 Capstone Law APC

14
15 By: 

16 Bevin Allen Pike
17 Daniel S. Jonathan
18 Trisha K. Monesi

19 Attorneys for Plaintiff Karla Garcia
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EXHIBIT “1”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

November 19, 2021

VIA ONLINE SUBMISSION

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

Subject: *Karla Garcia v. American Meals, Inc., et al.*

Dear PAGA Administrator:

This office represents Karla Garcia in connection with her claims under the California Labor Code. Ms. Garcia was an employee of AMERICAN MEALS, INC. and/or RIPON RESTAURANT GROUP. For the purpose of this letter, Ms. Garcia collectively refers to these entities as “AMERICAN MEALS.”

The employers may be contacted directly at the addresses below:

AMERICAN MEALS, INC.
3439 BROOKSIDE ROAD, SUITE 103
STOCKTON, CA 95219

RIPON RESTAURANT GROUP
3439 BROOKSIDE RD., SUITE 103
STOCKTON, CA 95219

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

AMERICAN MEALS employed Ms. Garcia as an hourly paid, non-exempt employee from approximately June 2019 to July 2021. Ms. Garcia worked for AMERICAN MEALS as a Server and Assistant Manager at its Denny’s restaurant location in Vacaville, California. During her employment, Ms. Garcia typically worked ten (10) to fifteen (15) or more hours per day, five (5) to six (6) days per week. Ms. Garcia typically worked the night shift from 5:00 p.m. to 3:00 a.m. or later. Ms. Garcia was compensated approximately \$18.00 per hour at the time her employment ended with AMERICAN MEALS. Her job duties included, without limitation, counting money, overseeing other employees, preparing take-out orders, cleaning and maintaining the premises, and training other employees.

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

AMERICAN MEALS’s Company-Wide and Uniform Payroll and HR Practices

AMERICAN MEALS, INC. is a California corporation which operates Denny’s restaurant franchise locations throughout California. AMERICAN MEALS operates approximately eight (8) restaurant locations in California. Upon information and belief, AMERICAN MEALS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Stockton, California, for all non-exempt, hourly paid employees working for AMERICAN MEALS in California, including Ms. Garcia and other aggrieved employees. At all relevant times, AMERICAN MEALS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Garcia and other aggrieved employees, regardless of its location or position.

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

AMERICAN MEALS willfully failed to pay all overtime wages owed to Ms. Garcia and other aggrieved employees. During the relevant time period, Ms. Garcia and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a

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

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, AMERICAN MEALS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Garcia and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to her shift, Ms. Garcia was required to spend up to five (5) minutes per instance waiting and then undergoing a mandatory temperature check and filled out a health screening form, before being permitted to clock in for her shift. Even though AMERICAN MEALS required these health screenings, AMERICAN MEALS did not provide Ms. Garcia and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Second, during the relevant period, AMERICAN MEALS had, and continues to have, a company-wide policy of discouraging and impeding Ms. Garcia and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with AMERICAN MEALS's use of labor budgets and assignment of heavy workloads, led Ms. Garcia and other aggrieved employees to work off-the-clock before their scheduled shift times. For example, at least once a month for about 30 minutes each instance, Ms. Garcia was required to travel to a market to pick up supplies and ingredients, such as vegetables, lemons, and cups, on her way to work and prior to clocking in for the start of her shift. As a further example, about once a week, when Ms. Garcia arrived early to the restaurant, AMERICAN MEALS's management required her to start working immediately and before she was able to clock in for the start of her shift because the restaurant was busy. Ms. Garcia would work for up to 15 minutes but was not permitted to clock in before her scheduled shift start-time. Additionally, Ms. Garcia was occasionally called into the manager's office for about five (5) minutes per instance to meet with the manager prior to clocking in for the start of her shift. Thus, AMERICAN MEALS failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Ms. Garcia and other aggrieved employees received no compensation for this pre-shift, off-the-clock time.

Moreover, AMERICAN MEALS's company-wide policy of limiting overtime also forced Ms. Garcia and other aggrieved employees to work after clocking out at the end of their scheduled shifts and/or on days off. For example, at least 2-3 times during Ms. Garcia's employment she was pressured to report to the restaurant and help set up outdoor seating tents for about two (2) hours on her days off. As another example, on 2-3 occasions Ms. Garcia was required to complete 30-minute online trainings off-the-clock while at home. Further, at least 3-4 times per week, for about five (5) minutes per instance, Ms. Garcia's managers would call her on her personal mobile phone on her off-days to discuss work-related matters, such as what occurred at the restaurant during her shift. This off-the-clock work could have been recorded by AMERICAN MEALS, but it refused to do so to avoid payment of additional wages to Ms. Garcia and other aggrieved employees. Thus, AMERICAN MEALS failed to track all of the time that employees spent performing work-related tasks after clocking out at the end of their shifts or on days off, and Ms. Garcia and other aggrieved employees received no compensation for this time.

Third, as stated, AMERICAN MEALS had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate

meal period coverage, because there were too few employees on duty to handle the workload. Moreover, AMERICAN MEALS has a practice of failing to schedule meal periods, which further caused Ms. Garcia and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. Garcia 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, Ms. Garcia often missed her meal periods entirely when she was the manager on duty because she was pressured to continue working and oversee the restaurant operations. Further, because AMERICAN MEALS frowned upon employees accruing meal period penalties, AMERICAN MEALS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by AMERICAN MEALS. Consequently, Ms. Garcia and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, in conjunction with understaffing its restaurants, AMERICAN MEALS had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets AMERICAN MEALS implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Garcia and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the restaurant and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving AMERICAN MEALS's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. Garcia and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods.

Fifth, to prevent Ms. Garcia and other aggrieved employees from incurring meal period penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS's timekeeping system automatically locked out employees at the fifth hour of their shift (if they had not yet taken their meal period) by locking the register that employees used to input customer orders and forced employees to clock out for their meal period in order to reflect compliant meal periods. Additionally, AMERICAN MEALS's timekeeping system prevented Ms. Garcia and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Garcia and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, AMERICAN MEALS's timekeeping system further prevented Ms. Garcia and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Sixth, during the relevant period, AMERICAN MEALS had a company-wide "on-call" policy, whereby it scheduled Ms. Garcia and other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to AMERICAN MEALS's benefit and to the detriment of Ms. Garcia and other aggrieved employees. By utilizing "on-call" shifts, AMERICAN MEALS received the benefit of being able to maximize revenue by having a standby workforce it could choose to utilize or not, depending on restaurant traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work.

When scheduled for an "on-call" or standby shift, Ms. Garcia and other aggrieved employees were required to wait for the restaurant to call them 1-2 hours prior to their scheduled standby shift;

sometimes Ms. Garcia would call in herself to confirm if she was required to report to work that day. Ms. Garcia and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective restaurant locations on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Ms. Garcia and other aggrieved employees were controlled by AMERICAN MEALS because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Ms. Garcia refrained from making plans altogether while “on-call” for a standby shift because she knew that she had to drop whatever she was doing at a moment’s notice if she was instructed to work her standby shift. AMERICAN MEALS did not pay Ms. Garcia and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their restaurant locations on days they ultimately were not called in. AMERICAN MEALS also did not compensate Ms. Garcia and other aggrieved employees for the time they spent calling in to see if they were needed.

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

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

AMERICAN MEALS’s failure to pay Ms. Garcia and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

First, as stated above, due to AMERICAN MEALS’s mandated pre-shift COVID-19 temperature checks and/or health screenings, Ms. Garcia and other aggrieved employees performed work off-the-

clock before their scheduled shifts, because AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees with any mechanism to record the time they spent completing the mandated health screenings. Second, during the relevant time period, as a result of AMERICAN MEALS's policy of limiting the amount of overtime employees could accrue, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start and end times to complete their tasks, such as, traveling to markets to pick up supplies, speaking with management about work-related matters outside of their scheduled shifts, attending to a rush of customers prior to clocking in, setting up tents for outdoor seating areas, and completing online training at home. However, AMERICAN MEALS failed to track this time Ms. Garcia and other aggrieved employees spent working off-the-clock, and thus, Ms. Garcia and other aggrieved employees received no compensation for this time.

Third, as set forth above, due to AMERICAN MEALS's company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, subsequent lack of meal period coverage, and/or policy requiring managerial employees to stay on or near the restaurant premises during meal periods, Ms. Garcia and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS pressured Ms. Garcia and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, AMERICAN MEALS's timekeeping system forced employees to clock out by the fifth hour of their shift to reflect compliant meal periods but management pressured employees to continue working, time for which they were not paid. Also, as set forth above, AMERICAN MEALS systematically failed to pay Ms. Garcia and other aggrieved employees for actual hours worked during unpaid meal periods, because AMERICAN MEALS's timekeeping system locked out Ms. Garcia and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Finally, as stated above, AMERICAN MEALS had a company-wide "on-call" policy, whereby it required Ms. Garcia and other aggrieved employees to wait to be called by AMERICAN MEALS when scheduled for "on-call" or standby shifts. However, AMERICAN MEALS did not pay Ms. Garcia and other aggrieved employees at least minimum wages for the time they spent calling in or waiting to see if they were needed at the restaurant.

Thus, AMERICAN MEALS did not pay at least minimum wages for all hours worked by Ms. Garcia and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, AMERICAN MEALS 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, AMERICAN MEALS regularly failed to pay at least minimum wages to Ms. Garcia and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, as stated, AMERICAN MEALS had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Garcia and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, AMERICAN MEALS had a requirement that a managerial employee be present on the restaurant floor at all times, but AMERICAN MEALS's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Garcia and other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers.

As a result, Ms. Garcia and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Garcia often missed her meal periods entirely when she was the manager on duty because she was pressured to continue working and oversee the restaurant operations. Further, because AMERICAN MEALS frowned upon employees accruing meal period penalties, AMERICAN MEALS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by AMERICAN MEALS.

Moreover, AMERICAN MEALS did not provide Ms. Garcia and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Ms. Garcia worked shifts in excess of 10 hours in one day at least four (4) days per week and never took a second meal period. Ms. Garcia 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.

AMERICAN MEALS knew or should have known that as a result of its company-wide policies and/or practices, Ms. Garcia and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. AMERICAN MEALS further knew or should have known that it did not pay Ms. Garcia and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted. As set forth above, to prevent Ms. Garcia and other aggrieved employees from incurring meal period penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS's timekeeping system automatically locked out employees at the fifth hour of their shift (if they had not yet taken their meal period) by locking the register that employees used to input customer orders and forced employees to clock out for their meal period while they continued to work in order to reflect compliant meal periods. Additionally, AMERICAN MEALS's timekeeping system locked out Ms. Garcia and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed even when their meal periods were shortened or interrupted.

Furthermore, AMERICAN MEALS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Garcia and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that AMERICAN MEALS did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, AMERICAN MEALS did not pay other aggrieved employees at the correct rate of pay for premiums because AMERICAN MEALS 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, AMERICAN MEALS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Garcia and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

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

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

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

AMERICAN MEALS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Garcia and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that AMERICAN MEALS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, AMERICAN MEALS did not pay other aggrieved employees at the correct rate of pay for premiums because AMERICAN MEALS 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, AMERICAN MEALS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Garcia 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. AMERICAN MEALS has not provided Ms. Garcia 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, AMERICAN MEALS has knowingly and intentionally provided Ms. Garcia and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AMERICAN MEALS issued uniform wage statements to Ms. Garcia and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, AMERICAN MEALS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because AMERICAN MEALS did not record the time Ms. Garcia 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), AMERICAN MEALS did not list the correct amount of gross wages and net wages earned by Ms. Garcia and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, AMERICAN MEALS failed to accurately list the total number of hours worked by Ms. Garcia and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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), AMERICAN MEALS willfully failed to maintain accurate payroll records for Ms. Garcia 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, AMERICAN MEALS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Garcia and other aggrieved employees, in violation of section 1198. As stated, AMERICAN MEALS engaged in a company-wide practice and/or policy of falsifying Ms. Garcia’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Garcia and other aggrieved employees. Furthermore, in light of AMERICAN MEALS’s failure to provide Ms. Garcia and other aggrieved employees with second 30-minute meal periods to which they were entitled, AMERICAN MEALS kept no records of meal start and end times for second meal periods.

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

Ms. Garcia 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, AMERICAN MEALS failed to pay Ms. Garcia 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.

Ms. Garcia 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.

AMERICAN MEALS willfully failed to pay Ms. Garcia and other aggrieved employees who are no longer employed by AMERICAN MEALS 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 AMERICAN MEALS's employ.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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)

During the relevant time period, AMERICAN MEALS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because AMERICAN MEALS failed to pay Ms. Garcia and 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 regularly scheduled day's work.

As described above, AMERICAN MEALS had a company-wide "on-call" policy, whereby it scheduled Ms. Garcia and other aggrieved employees to work "on-call," or on standby. When scheduled for a "on-call" or standby shift, Ms. Garcia and other aggrieved employees regularly presented themselves as ready for work by waiting for the restaurant to call them before their scheduled standby shift or by calling into the restaurant themselves prior to their scheduled standby shift and would await instructions on whether to report to the restaurant. When this occurred, AMERICAN MEALS did not pay Ms. Garcia 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 AMERICAN MEALS's "on-call" policy and were ultimately not called.

AMERICAN MEALS also had a company-wide practice of sending Ms. Garcia and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. Garcia and other aggrieved employees for half of their scheduled shift. For example, when scheduled to work an eight (8) hour shift, Ms. Garcia was sent home after two (2) hours because business was slow, but was only paid for the time that she had worked. Although Ms. Garcia and other aggrieved employees would report to work based on the schedule that AMERICAN MEALS provided to them, AMERICAN MEALS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Ms. Garcia 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)(A).

Ms. Garcia 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."

First, during the relevant time period, AMERICAN MEALS, on a company-wide basis, required that Ms. Garcia and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Garcia and other aggrieved employees would be contacted on their off-days on their personal mobile devices by their managers and/or supervisors regarding scheduling, conducting video training conferences, and other work-related matters. Ms. Garcia spent about 20 minutes per week using her personal cellular phone in connection with carrying out her employee duties. In addition, AMERICAN MEALS required that Ms. Garcia use her personal cellular phone to check the company's website for specials and

communicate with UberEats, DoorDash, and other meal delivery services regarding to-go orders during her shifts. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, AMERICAN MEALS failed to reimburse them for this cost.

Second, during the relevant time period, AMERICAN MEALS, on a company-wide basis, required that Ms. Garcia and other aggrieved employees use their own personal vehicles to run company errands. For example, at least once a month during the relevant time period, Ms. Garcia was required to use her personal vehicle and drive to pick up supplies from a market on her way to work. Additionally, during the relevant time period, Ms. Garcia was required to use her personal vehicle and run company errands during her shift; for example, at least four (4) times per week Ms. Garcia was required to drive to a nearby gas station to purchase propane tanks. On average, Ms. Garcia estimates driving approximately 50 miles per month to run company errands on and off-the-clock. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, AMERICAN MEALS failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Garcia spent about \$500 over the course of her employment purchasing cleaning supplies, patio lights, decorative plants, an umbrella, and other items for the restaurant because AMERICAN MEALS failed to provide her with these necessary supplies which were required for the restaurant to operate properly and/or meet management's expectations. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees purchase supplies and equipment to carry out their work-related responsibilities, AMERICAN MEALS failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Fourth, during the relevant time period, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to wear uniforms bearing the Denny's company logo, including uniform polo shirts. However, AMERICAN MEALS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, AMERICAN MEALS only provided Ms. Garcia and other aggrieved employees with one polo shirt at the time of hire. Because AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Garcia and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Garcia's and other aggrieved employees' uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, AMERICAN MEALS failed to maintain uniforms they required Ms. Garcia and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

AMERICAN MEALS could have provided Ms. Garcia and other aggrieved employees with the actual tools for use on the job, such as company mobile devices, company vehicles, and supplies and equipment, as well as an adequate number of uniform items or access to laundering services. Or, AMERICAN MEALS could have reimbursed employees for the costs of their mobile device usage,

travel, mileage, supplies, and laundering expenses or provided a uniform maintenance allowance. Instead, AMERICAN MEALS passed these operating costs off onto Ms. Garcia and other aggrieved employees. At all relevant times, Ms. Garcia did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

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

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

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

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

Pre-Litigation Demand

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

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

1. AMERICAN MEALS shall pay Ms. Garcia and all other aggrieved employees employed by AMERICAN MEALS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. AMERICAN MEALS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. AMERICAN MEALS shall conduct a survey or interview all current and former aggrieved employees in California who worked for AMERICAN MEALS 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 mobile device expenses, mileage, travel expenses, supply expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. AMERICAN MEALS 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. AMERICAN MEALS 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. AMERICAN MEALS 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.

6. AMERICAN MEALS shall reimburse Ms. Garcia and those aggrieved employees who were required to pay for any business expenses incurred for AMERICAN MEALS's benefit, including, but not limited to, personal mobile device expenses, personal vehicle expenses and mileage costs, out-of-pocket costs incurred to purchase necessary supplies and equipment, uninform laundering expenses incurred, and other expenditures, as required by Labor Code section 2802.
7. AMERICAN MEALS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
8. AMERICAN MEALS shall pay accrued legal interest to Ms. Garcia and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
9. AMERICAN MEALS shall provide Ms. Garcia and all aggrieved employees employed by AMERICAN MEALS 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).
10. AMERICAN MEALS shall pay waiting time penalties, equal to 30 days of pay, to Ms. Garcia and each former aggrieved employee who was not paid all wages due as described herein.
11. AMERICAN MEALS 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:

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

Best Regards,



Ninel Kocharyan

Copy: AMERICAN MEALS, INC. (via U.S. Certified Mail); RIPON RESTAURANT GROUP (via U.S. Certified Mail).

Capstone
LAW APC
1875 Century Park East, Ste 1000
Los Angeles, CA 90067

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American Meals, Inc.
3439 Brookside Road, Suite 103
Stockton, CA 95219



9590 9402 4882 9032 7426 21

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0362

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

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☐ Addressee

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3439 Brookside Road, Suite 103
Stockton, CA 95219

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American Meals, Inc.
3439 Brookside Road, Suite 103
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Sent to Ripon Restaurant Group 3439 Brookside Rd, Suite 103 Stockton, CA 95219			
Signature of Addressee Kavala V. Arumian M.A.			
PS Form 3800, April 2013 PSN 7530-02-000-9053 See Reverse for Instructions			

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

1. Article Addressed to:

Ripon Restaurant Group
3439 Brookside Road, Suite 103
Stockton, CA 95219



9590 9402 4882 9032 7445 88

2. Article Number (Transfer from service label)

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

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☒ Agent

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Domestic Return Receipt

Ripon Restaurant Group
3439 Brookside Road, Suite 103
Stockton, CA 95219

EXHIBIT “2”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

December 1, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Karla Garcia v. American Meals, Inc., et al.*
LWDA Case No. LWDA-CM-853018-21 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Karla Garcia in connection with her claims under the California Labor Code. Ms. Garcia was an employee of AMERICAN MEALS, INC. and/or RIPON RESTAURANT GROUP. For the purpose of this letter, Ms. Garcia collectively refers to these entities as “AMERICAN MEALS.” We previously provided notice of Ms. Garcia’s claims to the California Labor and Workforce Development Agency (“LWDA”) on November 19, 2021, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Ms. Garcia’s prior LWDA notice and is intended to clarify the facts and theories supporting her claims.

The employers may be contacted directly at the addresses below:

AMERICAN MEALS, INC.
3439 BROOKSIDE ROAD, SUITE 103
STOCKTON, CA 95219

RIPON RESTAURANT GROUP
3439 BROOKSIDE RD., SUITE 103
STOCKTON, CA 95219

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

AMERICAN MEALS employed Ms. Garcia as an hourly paid, non-exempt employee from approximately June 2019 to July 2021. Ms. Garcia worked for AMERICAN MEALS as a Server and Assistant Manager at its Denny’s restaurant location in Vacaville, California. During her employment, Ms. Garcia typically worked eight (8) to twelve (12) or more hours per day, five (5) to

six (6) days per week. Ms. Garcia typically worked the night shift from 5:00 p.m. to 3:00 a.m. or later. Ms. Garcia was compensated approximately \$18.00 per hour at the time her employment ended with AMERICAN MEALS. Her job duties included, without limitation, counting money, overseeing other employees, preparing take-out orders, cleaning and maintaining the premises, and training other employees.

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

AMERICAN MEALS’s Company-Wide and Uniform Payroll and HR Practices

AMERICAN MEALS, INC. is a California corporation which operates Denny’s restaurant franchise locations throughout California. AMERICAN MEALS operates approximately eight (8) restaurant locations in California. Upon information and belief, AMERICAN MEALS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Stockton, California, for all non-exempt, hourly paid employees working for AMERICAN MEALS in California, including Ms. Garcia and other aggrieved employees. At all relevant times, AMERICAN MEALS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Garcia and other aggrieved employees, regardless of its location or position.

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

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

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

AMERICAN MEALS willfully failed to pay all overtime wages owed to Ms. Garcia and other aggrieved employees. During the relevant time period, Ms. Garcia 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, AMERICAN MEALS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Garcia and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to her shift, Ms. Garcia was required to spend up to five (5) minutes per instance waiting and then undergoing a mandatory temperature check and filled out a health screening form, before being permitted to clock in for her shift. Even though AMERICAN MEALS required these health screenings, AMERICAN MEALS did not provide Ms. Garcia and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Second, during the relevant period, AMERICAN MEALS had, and continues to have, a company-wide policy of discouraging and impeding Ms. Garcia and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with AMERICAN MEALS's use of labor budgets and assignment of heavy workloads, led Ms. Garcia and other aggrieved employees to work off-the-clock before their scheduled shift times. For example, at least once a month for about 30 minutes each instance, Ms. Garcia was required to travel to a market to pick up supplies and ingredients, such as vegetables, lemons, and cups, on her way to work and prior to clocking in for the start of her shift. As a further example, about once a week, when Ms. Garcia arrived early to the restaurant, AMERICAN MEALS's management required her to start working immediately and before she was able to clock in for the start of her shift because the restaurant was busy. Ms. Garcia would work for up to 15 minutes but was prevented from clocking in before her scheduled shift start-time. Additionally, Ms. Garcia was occasionally called into the manager's office for about five (5) minutes per instance to meet with the manager prior to clocking in for the start of her shift. Thus, AMERICAN MEALS failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Ms. Garcia and other aggrieved employees received no compensation for this pre-shift, off-the-clock time.

Moreover, AMERICAN MEALS's company-wide policy of limiting overtime also forced Ms. Garcia and other aggrieved employees to work after clocking out at the end of their scheduled shifts and/or on days off. For example, at least 2-3 times during Ms. Garcia's employment she was pressured to report to the restaurant and help set up outdoor seating tents for about two (2) hours on her days off. As another example, on 2-3 occasions Ms. Garcia was required to complete 30-minute online trainings off-the-clock while at home. Similarly, AMERICAN MEALS required employees to obtain California Food Handler Cards, which led to other aggrieved employees completing online food safety training and testing from home, on their off-days, and to keep their certificates and/or trainings up-to-date, but AMERICAN MEALS failed to compensate other aggrieved employees for this time spent doing so. Further, at least 3-4 times per week, for about five (5) minutes per instance, Ms. Garcia's managers would call her on her personal mobile phone on her off-days to discuss work-related matters, such as what occurred at the restaurant during her shift. This off-the-clock work

could have been recorded by AMERICAN MEALS, but it refused to do so to avoid payment of additional wages to Ms. Garcia and other aggrieved employees. Thus, AMERICAN MEALS failed to track all of the time that employees spent performing work-related tasks after clocking out at the end of their shifts or on days off, and Ms. Garcia and other aggrieved employees received no compensation for this time.

Third, as stated, AMERICAN MEALS had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, AMERICAN MEALS has a practice of failing to schedule meal periods, which further caused Ms. Garcia and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. Garcia 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, Ms. Garcia often missed her meal periods entirely when she was the manager on duty because she was pressured to continue working and oversee the restaurant operations. Further, because AMERICAN MEALS frowned upon employees accruing meal period penalties, AMERICAN MEALS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by AMERICAN MEALS. Consequently, Ms. Garcia and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, in conjunction with understaffing its restaurants, AMERICAN MEALS had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets AMERICAN MEALS implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Garcia and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the restaurant and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving AMERICAN MEALS's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. Garcia and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods.

Fifth, to prevent Ms. Garcia and other aggrieved employees from incurring meal period penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS's timekeeping system automatically locked out employees at the fifth hour of their shift (if they had not yet taken their meal period) by locking the register that employees used to input customer orders and forced employees to clock out for their meal period in order to reflect compliant meal periods. Additionally, AMERICAN MEALS's timekeeping system prevented Ms. Garcia and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Garcia and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed without managerial clearance. Thus, AMERICAN MEALS's timekeeping system further prevented Ms. Garcia and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Sixth, during the relevant period, AMERICAN MEALS had a company-wide “on-call” policy, whereby it scheduled Ms. Garcia and other aggrieved employees to work “on-call,” or on standby. These “on-call” shifts worked to AMERICAN MEALS’s benefit and to the detriment of Ms. Garcia and other aggrieved employees. By utilizing “on-call” shifts, AMERICAN MEALS received the benefit of being able to maximize revenue by having a standby workforce it could choose to utilize or not, depending on restaurant traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day’s work.

When scheduled for an “on-call” or standby shift, Ms. Garcia and other aggrieved employees were required to wait for the restaurant to call them 1-2 hours prior to their scheduled standby shift; sometimes Ms. Garcia would call in herself to confirm if she was required to report to work that day. Ms. Garcia and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective restaurant locations on short notice and work their standby shift. When scheduled to be “on-call” for a standby shift, Ms. Garcia and other aggrieved employees were controlled by AMERICAN MEALS because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Ms. Garcia refrained from making plans altogether while “on-call” for a standby shift because she knew that she had to drop whatever she was doing at a moment’s notice if she was instructed to work her standby shift. AMERICAN MEALS did not pay Ms. Garcia and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their restaurant locations on days they ultimately were not called in. AMERICAN MEALS also did not compensate Ms. Garcia and other aggrieved employees for the time they spent calling in to see if they were needed.

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

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

AMERICAN MEALS’s failure to pay Ms. Garcia and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

First, as stated above, due to AMERICAN MEALS’s mandated pre-shift COVID-19 temperature checks and/or health screenings, Ms. Garcia and other aggrieved employees performed work off-the-clock before their scheduled shifts, because AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees with any mechanism to record the time they spent completing the mandated health screenings.

Second, during the relevant time period, as a result of AMERICAN MEALS’s policy of limiting the amount of overtime employees could accrue, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start and end times to complete their tasks, such as, traveling to markets to pick up supplies, speaking with management about work-related matters outside of their scheduled shifts, attending to a rush of customers prior to clocking in, setting up tents for outdoor seating areas, and completing online training at home. However, AMERICAN MEALS failed to track this time Ms. Garcia and other aggrieved employees spent working off-the-clock, and thus, Ms. Garcia and other aggrieved employees received no compensation for this time.

Third, as set forth above, due to AMERICAN MEALS’s company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, subsequent lack of meal period coverage, and/or policy requiring managerial employees to stay on or near the restaurant premises during meal periods, Ms. Garcia and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS pressured Ms. Garcia and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, AMERICAN MEALS’s timekeeping system forced employees to clock out by the fifth hour of their shift to reflect compliant meal periods but management pressured employees to continue working, time for which they were not paid. Also, as set forth above, AMERICAN MEALS systematically failed to pay Ms. Garcia and other aggrieved employees for actual hours worked during unpaid meal periods, because AMERICAN MEALS’s timekeeping system locked out Ms. Garcia and other aggrieved employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed without managerial clearance.

Fourth, as stated above, AMERICAN MEALS had a company-wide “on-call” policy, whereby it required Ms. Garcia and other aggrieved employees to wait to be called by AMERICAN MEALS when scheduled for “on-call” or standby shifts. However, AMERICAN MEALS did not pay Ms. Garcia and other aggrieved employees at least minimum wages for the time they spent calling in or waiting to see if they were needed at the restaurant.

Thus, AMERICAN MEALS did not pay at least minimum wages for all hours worked by Ms. Garcia and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, AMERICAN MEALS 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, AMERICAN MEALS regularly failed to pay at least minimum wages to Ms. Garcia and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. Garcia and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, as stated, AMERICAN MEALS had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Garcia and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, AMERICAN MEALS had a requirement that a managerial employee be present on the restaurant floor at all times, but AMERICAN MEALS's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Garcia and other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers.

As a result, Ms. Garcia and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Garcia often missed her meal periods entirely when she was the manager on duty because she was pressured to continue working and oversee the restaurant operations. Further, because AMERICAN MEALS frowned upon employees accruing meal period penalties, AMERICAN MEALS's management pressured employees to clock out for meal periods to

reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by AMERICAN MEALS.

Moreover, AMERICAN MEALS did not provide Ms. Garcia and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Ms. Garcia worked shifts in excess of 10 hours in one day at least four (4) days per week and never took a second meal period. Ms. Garcia 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.

Moreover, AMERICAN MEALS had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. AMERICAN MEALS took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, AMERICAN MEALS's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. AMERICAN MEALS's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Garcia and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That AMERICAN MEALS requires Ms. Garcia and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because AMERICAN MEALS's obligation to provide Ms. Garcia and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

AMERICAN MEALS knew or should have known that as a result of its company-wide policies and/or practices, Ms. Garcia and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. AMERICAN MEALS further knew or should have known that it did not pay Ms. Garcia and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted. As set forth above, to prevent Ms. Garcia and other aggrieved employees from incurring meal period penalties that AMERICAN MEALS would otherwise owe, AMERICAN MEALS's timekeeping system automatically locked out employees at the fifth hour of their shift (if they had not yet taken their meal period) by locking the register that employees used to input customer orders and forced employees to clock out for their

meal period while they continued to work in order to reflect compliant meal periods. Additionally, AMERICAN MEALS's timekeeping system locked out Ms. Garcia and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed without managerial clearance even when their meal periods were shortened or interrupted.

Furthermore, AMERICAN MEALS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Garcia and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that AMERICAN MEALS did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, AMERICAN MEALS did not pay other aggrieved employees at the correct rate of pay for premiums because AMERICAN MEALS 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, AMERICAN MEALS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Garcia and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

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

being authorized and permitted to take rest periods.

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

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

AMERICAN MEALS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Garcia and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that AMERICAN MEALS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, AMERICAN MEALS did not pay other aggrieved employees at the correct rate of pay for premiums because AMERICAN MEALS 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, AMERICAN MEALS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Garcia 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. AMERICAN MEALS has not provided Ms. Garcia 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, AMERICAN MEALS has knowingly and intentionally provided Ms. Garcia and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AMERICAN MEALS issued uniform wage statements to Ms. Garcia and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net

wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, AMERICAN MEALS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because AMERICAN MEALS did not record the time Ms. Garcia 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), AMERICAN MEALS did not list the correct amount of gross wages and net wages earned by Ms. Garcia and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, AMERICAN MEALS failed to accurately list the total number of hours worked by Ms. Garcia and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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), AMERICAN MEALS willfully failed to maintain accurate payroll records for Ms. Garcia 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, AMERICAN MEALS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Garcia and other aggrieved employees, in violation of section 1198. As stated, AMERICAN MEALS engaged in a company-wide practice and/or policy of falsifying Ms. Garcia’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Garcia and other aggrieved employees. Furthermore, in light of AMERICAN MEALS’s failure to provide Ms. Garcia and other aggrieved employees with second 30-minute meal periods to which they were entitled, AMERICAN MEALS kept no records of meal start and end times for second meal periods.

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

Ms. Garcia 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, AMERICAN MEALS failed to pay Ms. Garcia 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.

Ms. Garcia 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.

AMERICAN MEALS willfully failed to pay Ms. Garcia and other aggrieved employees who are no longer employed by AMERICAN MEALS 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 AMERICAN MEALS's employ.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 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)

During the relevant time period, AMERICAN MEALS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because AMERICAN MEALS failed to pay Ms. Garcia and 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 regularly scheduled day's work.

As described above, AMERICAN MEALS had a company-wide "on-call" policy, whereby it scheduled Ms. Garcia and other aggrieved employees to work "on-call," or on standby. When scheduled for a "on-call" or standby shift, Ms. Garcia and other aggrieved employees regularly presented themselves as ready for work by waiting for the restaurant to call them before their scheduled standby shift or by calling into the restaurant themselves prior to their scheduled standby

shift and would await instructions on whether to report to the restaurant. When this occurred, AMERICAN MEALS did not pay Ms. Garcia 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 AMERICAN MEALS's "on-call" policy and were ultimately not called.

AMERICAN MEALS also had a company-wide practice of sending Ms. Garcia and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. Garcia and other aggrieved employees for half of their scheduled shift. For example, when scheduled to work an eight (8) hour shift, Ms. Garcia was sent home after two (2) hours because business was slow, but was only paid for the time that she had worked. Although Ms. Garcia and other aggrieved employees would report to work based on the schedule that AMERICAN MEALS provided to them, AMERICAN MEALS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Garcia 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)(A).

Ms. Garcia 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."

First, during the relevant time period, AMERICAN MEALS, on a company-wide basis, required that Ms. Garcia and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Garcia and other aggrieved employees would be contacted on their off-days on their personal mobile devices by their managers and/or supervisors regarding scheduling, conducting video training conferences, and other work-related matters. Ms. Garcia spent about 20 minutes per week using her personal cellular phone in connection with carrying out her employee duties. In addition, AMERICAN MEALS required that Ms. Garcia use her personal cellular phone to check the company's website for specials and communicate with UberEats, DoorDash, and other meal delivery services regarding to-go orders during her shifts. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, AMERICAN MEALS failed to reimburse them for this cost.

Second, during the relevant time period, AMERICAN MEALS, on a company-wide basis, required that Ms. Garcia and other aggrieved employees use their own personal vehicles to run company

errands. For example, at least once a month during the relevant time period, Ms. Garcia was required to use her personal vehicle and drive to pick up supplies from a market on her way to work. Additionally, during the relevant time period, Ms. Garcia was required to use her personal vehicle and run company errands during her shift; for example, at least four (4) times per week Ms. Garcia was required to drive to a nearby gas station to purchase propane tanks. On average, Ms. Garcia estimates driving approximately 50 miles per month to run company errands on and off-the-clock. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, AMERICAN MEALS failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Garcia spent about \$500 over the course of her employment purchasing cleaning supplies, patio lights, decorative plants, an umbrella, and other items for the restaurant because AMERICAN MEALS failed to provide her with these necessary supplies which were required for the restaurant to operate properly and/or meet management's expectations. Although AMERICAN MEALS required Ms. Garcia and other aggrieved employees purchase supplies and equipment to carry out their work-related responsibilities, AMERICAN MEALS failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

Fourth, during the relevant time period, AMERICAN MEALS required Ms. Garcia and other aggrieved employees to wear uniforms bearing the Denny's company logo, including uniform polo shirts. However, AMERICAN MEALS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, AMERICAN MEALS only provided Ms. Garcia and other aggrieved employees with one polo shirt at the time of hire. Because AMERICAN MEALS failed to provide Ms. Garcia and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Garcia and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Garcia's and other aggrieved employees' uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, AMERICAN MEALS failed to maintain uniforms they required Ms. Garcia and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fifth, on information and belief, AMERICAN MEALS, on a company-wide basis, required other aggrieved employees to obtain and pay for certain certifications, such as a food handler's certificate, that were required for their continued employment, as well as associated costs such as training and/or examination fees. Thus, AMERICAN MEALS failed to reimburse other aggrieved employees for all of the costs of obtaining these certifications, including training and/or examination fees.

AMERICAN MEALS could have provided Ms. Garcia and other aggrieved employees with the actual tools for use on the job, such as company mobile devices, company vehicles, and supplies and equipment, as well as an adequate number of uniform items or access to laundering services. Or, AMERICAN MEALS could have reimbursed employees for the costs of their mobile device usage, travel, mileage, supplies, training and certification fees, and laundering expenses or provided a

uniform maintenance allowance. Instead, AMERICAN MEALS passed these operating costs off onto Ms. Garcia and other aggrieved employees. At all relevant times, Ms. Garcia did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

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

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

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

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

Best Regards,


Ninel Kocharyan

Copy: AMERICAN MEALS, INC. (via U.S. Certified Mail); RIPON RESTAURANT GROUP (via U.S. Certified Mail).

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PROOF OF SERVICE

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

On **January 26, 2022**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Ray Hussain
3439 Brookside Road
Stockton CA 95219

Registered Agent for Defendants
AMERICAN MEALS, INC. and
RIPON RESTAURANT GROUP

- ☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 26, 2022**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name

Signature

