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and Mirian Gonzalez Orellano

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

22CV393580

ROSA ESMERALDA ESTEBAN
MARTINEZ and MIRIAN GONZALEZ
ORELLANO, as aggrieved employees
pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
California and other aggrieved employees,

Plaintiffs,

vs.

PACIFIC CATCH, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiffs Rosa Esmeralda Esteban Martinez and Mirian Gonzalez Orellano, as
2 aggrieved employees and on behalf of the State of California and all other non-party
3 Aggrieved Employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
7 and any other available relief on behalf of Plaintiffs, the State of California, and other current
8 and former employees who worked for Defendants in California as non-exempt, hourly paid
9 employees and against whom one or more violations of any provision in Division 2 Part 2
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
11 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
12 in this complaint, at any time between one year prior to the filing of the pre-filing written
13 notices to the Labor and Workforce Development Agency (“LWDA”) in this case on
14 November 18, 2021, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of
15 civil penalties sought in this action does not exceed \$75,000.

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

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

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

2 4. Venue is proper in this Court, because Defendants employ or employed persons
3 within the County of Santa Clara, and have violated the requirements of the California Labor
4 Code and applicable Wage Order in this county which give rise to the penalties sought in this
5 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
6 the California Labor Code and applicable IWC Wage Order in at least five (5) restaurant
7 locations within the County of Santa Clara, including Defendants' restaurants located in
8 Campbell (1875 S Bascom Ave., Ste. 550, Campbell, California 95008); Cupertino (19399
9 Stevens Creek Blvd., Cupertino, California 95014); Mountain View (545 San Antonio Rd.,
10 Ste. 34, Mountain View, California 94040); Palo Alto (711 Stanford Shopping Ctr., Palo Alto,
11 California 94304); Santa Clara (3315 Coronado Pl., Santa Clara, California 95054). Pursuant
12 to California Civil Code of Procedure section 393, venue is proper for the recovery of a
13 penalty imposed by statute in the county in which the cause, or some part of the cause, arose.
14 Because Defendants have employees in Santa Clara County, and Plaintiffs could bring an
15 action filed under PAGA in any county in which an aggrieved employee worked and Labor
16 Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior*
17 *Court of Alameda County*, 60 Cal.App.5th 1069 (2021).

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

22 THE PARTIES

23 6. Plaintiff Rosa Esmeralda Esteban Martinez is a resident of Daly City, in San
24 Mateo County, California. Defendants employed Plaintiff Esteban Martinez as an hourly
25 paid, non-exempt Dishwasher, Butcher, Prep Cook, and Line Cook from approximately May
26 2019 to May 2021. Plaintiff Esteban Martinez worked for Defendants at their restaurant
27 located at 1200 9th Avenue in San Francisco, California. During her employment, Plaintiff
28 Esteban Martinez typically worked six (6) hours or more per day, five (5) days per week, and

1 approximately 30 hours or more per week. Plaintiff Esteban Martinez’s primary job duties
2 included, without limitation, butchering, preparing, and grilling fish, and restocking the
3 kitchen.

4 7. Plaintiff Mirian Gonzalez Orellano is a resident of San Francisco, in San
5 Francisco County, California. Defendants employed Plaintiff Gonzalez Orellano as an hourly
6 paid, non-exempt Line Cook from approximately September 2020 to June 2021. Plaintiff
7 Gonzalez Orellano worked for Defendants at their restaurant located at 1200 9th Avenue in
8 San Francisco, California. During her employment, Plaintiff Gonzalez Orellano typically
9 worked six (6) hours or more per day, five (5) days per week, and approximately 30 hours or
10 more per week. Plaintiff Gonzalez Orellano’s primary job duties included, without limitation,
11 preparing food on the line, handling orders for dine-in and delivery, and restocking her
12 workstation.

13 8. On information and belief, Defendants required some employees, including
14 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of
15 their hire or during their employment. On further information and belief, Defendants’ dispute
16 resolution policy and/or arbitration agreement was and is both procedurally and substantively
17 unconscionable. Specifically, Defendants presented employees with a Mutual Agreement to
18 Arbitrate Claims (“Arbitration Agreement”), which had to be reviewed and acknowledged
19 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
20 several documents presented to new employees for signature during the orientation process,
21 including Paycard Enrollment Form, Meal Period Waiver Form, Team Member Handbook
22 Acknowledgment Form, and Anti-Harassment Policy Review, among other documents. Also,
23 employees did not have a meaningful opportunity to negotiate the terms of the Arbitration
24 Agreement. Rather, it was provided to Defendants’ employees for them to sign on a take-it or
25 leave-it basis. Furthermore, Defendants did not set forth in the agreement or otherwise
26 provide employees with the rules which will govern the arbitration, instead forcing employees
27 to seek this information out on their own (“Arbitration rules of the American Arbitration
28 Association may be obtained at <http://www.adr.org/employment>. Arbitration rules of Judicial

1 Arbitration & Mediation Services may be obtained at [http://www.jamsadr.com/rules-](http://www.jamsadr.com/rules-employment-arbitration/)
2 employment-arbitration/. Employee may also obtain a copy of both arbitration rules from the
3 Company.”)

4 9. PACIFIC CATCH, INC. was and is, upon information and belief, a California
5 corporation, and at all times hereinafter mentioned, an employer whose employees are
6 engaged throughout this county and the State of California.

7 10. Plaintiffs are unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 11. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
12 were the partners, agents, owners, or managers of PACIFIC CATCH, INC. at all relevant
13 times.

14 12. Plaintiffs are informed and believe, and thereon allege, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, PACIFIC CATCH,
16 INC. and/or DOES 1 through 10 (collectively, “Defendants” or “PACIFIC CATCH”), each
17 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
18 each of the other co-Defendants and was acting within the course and scope of such agency,
19 employment, joint venture, or concerted activity with legal authority to act on the others’
20 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
21 policy of Defendants.

22 13. At all relevant times, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
24 and abetted the acts and omissions of each and all the other Defendants in proximately causing
25 the damages herein alleged.

26 14. Plaintiffs are informed and believe, and thereon allege, that each of said
27 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
28 omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

15. Defendants own and operate approximately 12 Pacific Catch: Westcoast Fish House restaurants throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Corte Madera, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

17. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Corte Madera, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

18. Defendants continue to employ non-exempt or hourly paid employees in California.

19. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel

1 practices, and about the requirements of California law.

2 20. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
3 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
4 were not recorded.

5 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 receive certain wages for overtime compensation and that they were not receiving certain
8 wages for overtime compensation.

9 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that other non-party Aggrieved Employees were entitled to be paid at a
11 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income
12 all remuneration required by law, including but not limited to, all income derived from
13 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to
14 include all forms of remuneration in calculating the regular rate of pay for other non-party
15 Aggrieved Employees.

16 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
18 receive at least minimum wages for compensation and that they were not receiving at least
19 minimum wages for work that was required to be done off-the-clock. In violation of the
20 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
21 least minimum wages for work done off-the-clock.

22 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
24 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
25 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
26 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
27 other non-party Aggrieved Employees were not provided with all meal periods or payment of
28 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,

uninterrupted, thirty (30) minute meal period.

25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the Labor Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code,

1 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
2 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
3 premiums, within permissible time periods.

4 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that other non-party Aggrieved Employees were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 31. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, Defendants knew or should have known that Defendants had a duty to provide
11 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
12 of their employment with Defendants as required by the California Wage Theft Prevention
13 Act, but failed to do so.

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

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

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

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

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

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

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

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

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

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

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

16 38. On November 18, 2021, Plaintiff Esteban Martinez provided written notice by
17 online filing to the LWDA and by certified mail to Defendants of the specific provisions of
18 the California Labor Code alleged to have been violated, including facts and theories to
19 support the alleged violations, in accordance with California Labor Code section 2699.3.
20 Plaintiff Esteban Martinez's written notice was accompanied with the applicable filing fee of
21 seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of
22 Plaintiff Esteban Martinez's written notice and assigned Plaintiff Esteban Martinez PAGA
23 Case Number LWDA-CM-852878-21. A true and correct copy of Plaintiff Esteban
24 Martinez's written notice to the LWDA and Defendants dated November 18, 2021, is attached
25 hereto as "Exhibit 1."

26 39. On November 18, 2021, Plaintiff Gonzalez Orellano provided written notice by
27 online filing to the LWDA and by certified mail to Defendants of the specific provisions of
28 the California Labor Code alleged to have been violated, including facts and theories to

1 support the alleged violations, in accordance with California Labor Code section 2699.3.
2 Plaintiff Gonzalez Orellano's written notice was accompanied with the applicable filing fee of
3 seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of
4 Plaintiff Gonzalez Orellano's written notice and assigned Plaintiff Gonzalez Orellano PAGA
5 Case Number LWDA-CM-852880-21. A true and correct copy of Plaintiff Gonzalez
6 Orellano's written notice to the LWDA and Defendants dated November 18, 2021, is attached
7 hereto as "Exhibit 2."

8 40. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
9 sent the written notices described above, and the LWDA has not responded that it intends to
10 investigate Plaintiffs' claims, and Defendants have not cured the violations.

11 41. Thus, Plaintiffs have satisfied the administrative prerequisites under California
12 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
13 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
14 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

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

1 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
2 applicable IWC Wage Order.

3 43. Defendants, at all times relevant to this complaint, were employers or persons
4 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
5 Employees' rights by violating various sections of the California Labor Code as set forth
6 above.

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

10 45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
12 private attorneys general, seek assessment and collection of civil penalties for themselves, all
13 other non-party Aggrieved Employees, and the State of California against Defendants for
14 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
15 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

16 **FIRST CAUSE OF ACTION**

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

18 **(Against all Defendants)**

19 46. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 47. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
23 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
24 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
25 aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those
26 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

27 48. Defendants' conduct, as alleged herein, violates numerous sections of the
28 California Labor Code, including, but not limited to, the following:

- 1 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
2 Wage Order for Defendants' failure to compensate Plaintiffs and other
3 non-party Aggrieved Employees with all required overtime pay and
4 failure to properly calculate the overtime rates paid to other non-party
5 Aggrieved Employees, as set forth below;
- 6 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
7 the applicable IWC Wage Order for Defendants' failure to compensate
8 Plaintiffs and other non-party Aggrieved Employees with at least
9 minimum wages for all hours worked, as set forth below;
- 10 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to provide
12 Plaintiffs and other non-party Aggrieved Employees with meal periods,
13 as set forth below;
- 14 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
15 applicable IWC Wage Order for Defendants' failure to authorize and
16 permit Plaintiffs and other non-party Aggrieved Employees to take rest
17 periods, as set forth below;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiffs and other non-party Aggrieved Employees, as
21 set forth below;
- 22 (f) Violation of Labor Code section 204 for failure to pay all earned wages
23 during employment, as set forth below;
- 24 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
25 earned wages upon termination, as set forth below;
- 26 (h) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
27 and other non-party Aggrieved Employees for all business expenses
28 necessarily incurred, as set forth below; and

- 1 (i) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
2 provide written notice of information material to Plaintiffs' and other
3 non-party Aggrieved Employees' employment with Defendants, as set
4 forth below.

5 **FAILURE TO PAY OVERTIME**

6 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

16 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
17 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
18 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
19 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
20 (40) hours in a workweek.

21 52. The applicable IWC Wage Order further provides that Defendants are and were
22 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
23 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
24 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
25 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

26 53. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

54. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time period, Plaintiffs and other non-party 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 worked were not recorded.

55. First, Defendants had, and continue to have, a company-wide policy and/or practice of discouraging and impeding Plaintiffs and other non-party Aggrieved Employees from recording hours worked that were outside their scheduled shifts. On information and belief, this limitation was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting hours to their scheduled shifts, coupled with Defendants' understaffing policy and assignment of heavy workloads, led Plaintiff Esteban Martinez and other non-party Aggrieved Employees to work off-the-clock before their scheduled shift times in order to complete assigned tasks. For example, Defendants' management instructed Plaintiff Esteban Martinez to report to work 5-15 minutes early to bring in the trash cans, unlock the restaurant doors, and disarm the alarm system, before she was permitted to clock in at her scheduled shift start-time. Additionally, it was not possible for Plaintiff Esteban Martinez and other non-party Aggrieved Employees to complete these tasks on the clock because, on information and belief, Defendants' timekeeping system would not permit Plaintiffs and other non-party Aggrieved Employees to clock in before their scheduled shift start times, so they would work off-the-clock to start or complete these duties. Thus, Defendants failed to track this time spent working before scheduled shifts, and Plaintiff Esteban Martinez and other non-party Aggrieved Employees received no compensation for this time.

56. Second, Defendants implemented, on a company-wide basis, an employer-

1 imposed requirement that Plaintiffs and other non-party Aggrieved Employees undergo
2 mandatory COVID-19 temperature checks and/or health screenings before clocking in for
3 their scheduled shifts. Prior to each shift, Plaintiffs and other non-party Aggrieved employees
4 were required to spend up to five (5) minutes waiting and/or undergoing the temperature
5 check, before being permitted to clock in for their shifts. Even though Defendants required
6 these temperature checks and/or health screenings, Defendants did not provide Plaintiffs and
7 other non-party Aggrieved Employees a mechanism to record this time worked so they could
8 be compensated for the time spend undergoing mandatory temperature checks and/or health
9 screenings.

10 57. Third, as stated, Defendants had, and continue to have, a uniform practice
11 and/or policy of understaffing their restaurant locations which resulted in a lack of adequate
12 meal period coverage, because there were too few employees on duty to handle the heavy
13 workload. Moreover, Defendants had a practice of failing to schedule or provide meal periods
14 at all (*see infra*), which further caused Plaintiffs and other non-party Aggrieved Employees to
15 not be relieved of their duties for complaint meal periods. As a result of this inadequate meal
16 period coverage, Plaintiffs and other non-party Aggrieved Employees were not always
17 afforded uninterrupted 30-minute meal periods during the shifts which they were entitled to
18 receive a meal period. Consequently, Plaintiffs and other non-party Aggrieved Employees
19 were required to work through and/or had their unpaid meal periods interrupted in order to
20 complete their assigned duties, time for which they were not paid.

21 58. Fourth, upon information and belief, because Defendants frowned upon
22 employees accruing meal period penalties, Defendants pressured employees to clock out for
23 meal periods, on threat of discipline, and/or adjusted employee time records to reflect
24 compliant meal periods, even when they did not receive a compliant meal period, in order to
25 strictly limit the meal penalties that Defendants would otherwise owe. In conjunction with
26 this policy, Defendants also pressured Plaintiffs and other non-party Aggrieved Employees
27 who had signed invalid meal period waivers (*see infra*) to clock out before they had worked
28 six (6) hours in a day, in order to limit their eligibility for meal periods they otherwise would

1 have received. For example, several times per week, Defendants required Plaintiff Esteban
2 Martinez to clock out at the end of her scheduled shift and continue working for 5-10 minutes,
3 cleaning and sweeping her assigned workstation, tasks she was required to complete before
4 she could leave for the day. Similarly, as a further example, several times per week,
5 Defendants required Plaintiff Gonzalez Orellano to clock out at the end of her scheduled shift
6 and continue working for 5-10 minutes, cleaning the kitchen and taking out the trash, tasks
7 she was required by Defendants to complete before she could leave for the day. Thus,
8 Plaintiffs and other non-party Aggrieved Employees were required to perform their assigned
9 tasks off-the-clock because Defendants wanted to avoid paying penalties for missed meal
10 periods.

11 59. Furthermore, on information and belief, Defendants' company-wide
12 timekeeping system prevented Plaintiffs and other non-party Aggrieved Employees from
13 recording all hours worked when their meal periods were shortened or interrupted, because the
14 system locked out Plaintiffs and other non-party Aggrieved Employees once they clocked out
15 for a meal period, and would not permit them to clock back in from a meal period before 30
16 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods
17 and Plaintiffs and other non-party Aggrieved Employees performed work during meal periods
18 for which they were not paid.

19 60. Fifth, Defendants had, and continue to have a company-wide policy and/or
20 practice of requiring Plaintiff Gonzalez Orellano and other non-party Aggrieved Employees to
21 obtain certain certificates, such as a food handler's certificate, and to keep their certificates
22 and/or trainings up-to-date, but Defendants failed to compensate Plaintiff Gonzalez Orellano
23 and other non-party Aggrieved Employees for this time spent doing so. For example, Plaintiff
24 Gonzalez Orellano was required to take an online training course while she was at home,
25 which took approximately two (2) hours to complete, but was not compensated for this time
26 worked. Thus, Defendants failed to track the time Plaintiff Gonzalez Orellano and other non-
27 party Aggrieved Employees spent completing the mandatory trainings, and Plaintiff Gonzalez
28 Orellano and other non-party Aggrieved Employees received no compensation for this time.

1 61. Defendants knew or should have known that, as a result of these company-wide
2 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
3 performing their assigned duties off-the-clock before and after their shifts and during meal
4 periods, and were suffered or permitted to perform work for which they were not paid.
5 Because Plaintiffs and other non-party Aggrieved Employees regularly worked shifts of eight
6 (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work
7 qualified for overtime premium pay.

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

18 63. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
19 the balance of overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 558 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
26 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
27 to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time

1 during which an employee is subject to the control of an employer, and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
3 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

4 65. First, as stated above, Defendants systematically failed to pay Plaintiffs and
5 other non-party Aggrieved Employees for actual hours worked before scheduled shifts,
6 because these hours were not accurately recorded. Because Defendants discouraged and
7 impeded Plaintiffs and other non-party Aggrieved Employees from recording hours worked
8 that were outside of their scheduled shifts, Plaintiff Esteban Martinez and other non-party
9 Aggrieved Employees were required to work off-the-clock before their scheduled shift start
10 times to complete their assigned duties. Moreover, as set forth above, Plaintiffs and other
11 non-party Aggrieved Employees were required to undergo COVID-19 health screenings prior
12 to clocking in for the start of their scheduled shifts, but were not compensated for this time.

13 66. Second, as set forth above, due to Defendants’ uniform practices of utilizing
14 labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide
15 meal periods, and subsequent lack of meal period coverage, Plaintiffs and other non-party
16 Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted,
17 and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated
18 above, on information and belief, in order to limit the meal penalties that Defendants would
19 otherwise owe, Defendants pressured Plaintiffs and other non-party Aggrieved Employees to
20 clock out for meal periods, on threat of discipline, and/or adjusted employee time records to
21 reflect compliant meal periods. In conjunction with this policy, Defendants also pressured
22 Plaintiffs and other non-party Aggrieved Employees to clock out before they worked six (6)
23 hours in day to limit their eligibility for meal periods, but required them to continue working,
24 time for which they were not paid. Furthermore, as set forth above, on information and belief,
25 Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved Employees
26 for actual hours worked during unpaid meal periods, because Defendants’ timekeeping system
27 locked out Plaintiffs and other non-party Aggrieved Employees for 30 minutes when they
28 clocked out for a meal period.

1 67. Finally, as stated, Plaintiff Gonzalez Orellano and other non-party Aggrieved
2 Employees were required to complete mandatory trainings and/or obtain certain certificates
3 while at home or outside of their scheduled shifts. However, Defendants did not compensate
4 Plaintiff Gonzalez Orellano and other non-party Aggrieved Employees for this time spent
5 working off-the-clock.

6 68. Thus, Defendants did not pay minimum wages for all hours worked by
7 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
8 hours did not qualify for overtime premium payment, Defendants did not pay at least
9 minimum wages for those hours worked off-the-clock in violation of California Labor Code
10 sections 1182.12, 1194, 1197, and 1198.

11 69. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
12 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
13 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
14 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
16 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

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

27 72. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

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

8 74. First, as stated, Defendants had, and continue to have, company-wide policies
9 and/or practices of understaffing pursuant to their labor budget practices, while
10 simultaneously assigning heavy workloads, and failing to schedule or provide meal periods at
11 all, which resulted in a lack of meal period coverage and prevented Plaintiffs and other non-
12 party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they
13 were entitled. As a result, Plaintiffs and other non-party Aggrieved Employees had to work
14 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
15 extended periods of time before taking meal periods. For example, Plaintiffs were required to
16 work through their meal periods due to the heavy workload and to meet the restaurant's
17 customer demand.

18 75. Second, as stated, on information and belief, because Defendants frowned upon
19 employees accruing meal period penalties, Defendants' management pressured Plaintiffs and
20 other non-party Aggrieved Employees to clock out for meal periods, upon threat of discipline,
21 and/or would adjust Plaintiffs' and other non-party Aggrieved Employees' time records to
22 reflect compliant meal periods, regardless of whether they had received a compliant meal
23 period or not, in order to strictly limit the meal penalties that would need to be paid by
24 Defendants. For example, both Plaintiff Esteban Martinez and Plaintiff Gonzalez Orellano
25 were sometimes required to clock out for their meal periods to record that they had received
26 compliant meal periods on shifts when they had not, in fact, received timely meal periods. In
27 conjunction with this policy, as stated, on information and belief, Defendants' management
28 would also pressure Plaintiffs and other non-party Aggrieved Employees who had signed

1 invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in
2 day and continue working to limit their eligibility for meal periods, in order to strictly limit
3 the meal penalties that would need to be paid by Defendants.

4 76. Moreover, as stated, Defendants' company-wide timekeeping system prevented
5 Plaintiffs and other non-party Aggrieved Employees from recording all hours worked when
6 their meal periods were shortened or interrupted, because the system locked out Plaintiffs and
7 other non-party Aggrieved Employees once they clocked out for a meal period, and would not
8 permit them to clock back in from a meal period before 30 minutes had elapsed.

9 77. Also, Defendants did not provide Plaintiff Gonzalez Orellano and other non-
10 party Aggrieved Employees with second 30-minute meal periods on days that they worked in
11 excess of ten (10) hours in one day. During her employment, Plaintiff Gonzalez Orellano
12 worked in excess of ten (10) or more hours per day, but was not provided a second 30-minute
13 meal period. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
14 period waivers on days that they were entitled to meal periods and were not relieved of all
15 duties.

16 78. Moreover, Defendants had a company-wide policy of requiring all newly hired
17 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
18 the position that non-exempt, hourly paid employees had waived their rights to first and/or
19 second meal periods for the entirety of their employment and, on that basis, did not provide
20 them with all meal periods to which they were entitled. Furthermore, Defendants' meal
21 period waiver form requires employees to provide one day's (24 hour) written notice should
22 they wish to revoke the waiver. Defendants' presumption that meal periods would not be
23 provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in
24 excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers
25 signed at or near the time of hire, and imposition on employees to revoke the waivers in
26 writing and in advance, discouraged and impeded Plaintiffs and other non-party Aggrieved
27 Employees from taking all meal periods to which they were entitled.

28 79. Furthermore, an employer's obligation to provide a meal period is only

1 “triggered” when the employer “employs an employee for a work period of more than five
2 hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits
3 anyone to work for a full five hours, its meal break obligation is triggered.”).

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

8 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
9 required Plaintiffs and other non-party Aggrieved Employees to sign meal period waivers
10 simultaneously at or near their time of hire (as opposed to on a specific work day) renders
11 them invalid and unenforceable, because Defendants’ obligation to provide Plaintiffs and
12 other non-party Aggrieved Employees with meal periods did not arise until they had employed
13 them for a full five (5) hours.

14 80. At all times mentioned herein, Defendants knew or should have known that as a
15 result of their policies, Plaintiffs and other non-party Aggrieved Employees were not actually
16 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
17 should have known that they did not pay Plaintiffs and other non-party Aggrieved Employees
18 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

28 82. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved

1 Employees compliant meal periods and failed to pay the full meal period premiums due.
2 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
3 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
4 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
5 2699(a), (f), and (g).

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

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

8 83. At all relevant times herein set forth, the applicable IWC Wage Order and
9 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other
10 non-party Aggrieved Employees' employment by Defendants.

11 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
12 employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period" and that the "rest period time shall be
14 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
15 hours or major fraction thereof" unless the total daily work time is less than three and one-half
16 (3 ½) hours.

17 85. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC. To comply with its obligation to authorize and permit rest
20 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
21 employer must "relinquish any control over how employees spend their break time, and
22 relieve their employees of all duties—including the obligation that an employee remain on
23 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
24 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

25 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
26 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
27 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
28 required rest period was not authorized and permitted.

1 87. During the relevant time period, Defendants regularly failed to authorize and
2 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
3 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
4 Defendants' policies and/or practices of understaffing and assigning heavy workloads
5 prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty
6 in order to take compliant rest periods. Defendants also failed to schedule rest periods, which,
7 coupled with Defendants' failure to provide adequate rest period coverage, further led to
8 Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to
9 take rest periods.

10 88. Furthermore, Defendants maintained a company-wide on-premises rest period
11 policy, which mandated that Plaintiffs and/or other non-party Aggrieved Employees remain on
12 Defendants' premises during their rest periods. Specifically, the non-compliant policy states
13 that "[e]mployers can require team members to stay onsite during [their] 10 minute rest
14 break. . . ." Because Plaintiffs and/or other non-party Aggrieved Employees were restricted
15 from leaving the premises during rest periods, they were denied the ability to use their rest
16 periods freely for their own purposes, such as running personal errands. Thus, Defendants
17 effectively maintained control over Plaintiffs and/or other non-party Aggrieved Employees
18 during rest periods.

19 89. As a result of Defendants' practices and policies, Plaintiffs and other non-party
20 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
21 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
22 were entitled. For example, Plaintiff Esteban Martinez worked through her shifts
23 approximately three (3) times per week without taking her 10-minute rest periods due to the
24 workload, the lack of coverage, and failure to schedule rest periods. Plaintiff Gonzalez
25 Orellano would also often work through her shifts without taking her 10-minute rest periods,
26 for the same reasons. As a further example, Plaintiff Esteban Martinez would have her rest
27 periods interrupted or cut short approximately once per week.

28 90. Defendants also have engaged in a company-wide practice and/or policy of not

1 paying all rest period premiums owed when compliant rest periods are not authorized and
2 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
3 Employees have not received premium pay for all missed rest periods. Alternatively, to the
4 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
5 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
6 Employees at the correct rate of pay for premiums because Defendants failed to include all
7 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
8 of remuneration, in the regular rate of pay.

9 91. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 558 and/or 2699(a), (f), and (g).

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

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

20 93. At all relevant times, Defendants have knowingly and intentionally provided
21 Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
22 wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and
23 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total
24 hours worked; net wages earned; and all applicable hourly rates in effect during the pay
25 period, including rates of pay for overtime wages and/or meal and rest period premiums, and
26 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
27 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 94. Because Defendants did not record the time Plaintiffs and other non-party

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

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

17 96. The wage statement deficiencies also include, without limitation, failing to list
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
19 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
20 for which employees were paid; failing to list the name of the employee and only the last four
21 digits of his or her social security number or an employee identification number other than a
22 social security number; failing to list the name and address of the legal entity that is the
23 employer; and/or failing to state all hours worked as a result of not recording or stating hours
24 worked off-the-clock.

25 97. California Labor Code section 1174(d) provides that "[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
4 civil penalty if they fail to maintain accurate and complete records as required by section
5 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
7 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
8 as a result of failing to record the off-the-clock hours that they worked.

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

26 99. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
27 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
28 recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and

1 (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

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

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

18 102. During the relevant time period, Defendants willfully failed to pay Plaintiffs
19 and other non-party Aggrieved Employees all wages due including, but not limited to,
20 overtime wages, minimum wages, and/or meal and rest period premiums, within the time
21 periods specified by California Labor Code section 204.

22 103. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES UPON TERMINATION**

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

26 104. At all times relevant herein set forth, California Labor Code sections 201 and
27 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
28 time of discharge are due and payable immediately, and that if an employee voluntarily leaves

1 his or her employment, his or her wages shall become due and payable not later than seventy-
2 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
3 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
4 at the time of quitting.

5 105. Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved
6 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
7 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
8 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
9 leaving Defendants' employ.

10 106. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
11 who are no longer employed by Defendants their wages earned and unpaid at the time of
12 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
13 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved
14 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
15 256 and/or 2699(a), (f), and (g).

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

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

1 108. During the relevant time period, Defendants required Plaintiffs and other non-
2 party Aggrieved Employees to report to work in “spotless and neat,” “stain-free, pressed”
3 uniforms bearing Defendants’ company logo, including uniform shirts and/or hats. However,
4 Defendants did not provide their employees with sufficient uniforms to wear for their shifts
5 throughout the week. For example, Defendants only provided Plaintiffs with several t-shirts
6 and one (1) hat during their employment. Because Defendants failed to provide Plaintiffs and
7 other non-party Aggrieved Employees with an adequate number of uniform items in relation
8 to their scheduled shifts and for the tasks they were required to perform, Plaintiffs and other
9 non-party Aggrieved Employees were forced to wash their uniforms more frequently than they
10 would otherwise do laundry and incur expenses in doing so. For example, due to the nature of
11 restaurant work, Plaintiffs’ uniforms would become stained with grease, sweaty, soiled, and/or
12 acquire an unpleasant odor such that they were unable to mix these clothes in with other
13 laundry. As a result, they had to wash their uniform items separately from their other clothing
14 items and incur additional laundry expenses for the upkeep of their uniforms. Thus,
15 Defendants failed to maintain uniforms they required Plaintiffs and other non-party Aggrieved
16 Employees to wear during their shifts and forced them to incur the cost of maintaining
17 employee uniforms.

18 109. Defendants could have provided Plaintiffs and other non-party Aggrieved
19 Employees with the actual tools for use on the job, such as an adequate number of uniforms or
20 access to laundering services. Or, Defendants could have reimbursed employees for the costs
21 of their laundering expenses or provided a uniform maintenance allowance. Instead,
22 Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved
23 Employees. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum
24 wage.

25 110. Defendants’ company-wide policy and/or practice of passing on their operating
26 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
27 section 2802. Defendants have intentionally and willfully failed to reimburse other non-party
28 Aggrieved Employees for necessary business-related expenses and costs.

111. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT**

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

112. 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 containing basic and material payroll information, including, among other things, 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. Labor Code § 2810.5(a)(1)(A)-(C).

113. Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A), and regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft forms that Defendants provided to Plaintiffs are blank where the aforementioned wage information should be filled in. Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

114. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
8 amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
13 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
17 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
18 termination); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
19 provide written notice of information material to employment);

20 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
21 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code sections 201,
22 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
23 2810.5;

24 4. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
26 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
27 1197, 1198, 2802, and 2810.5;

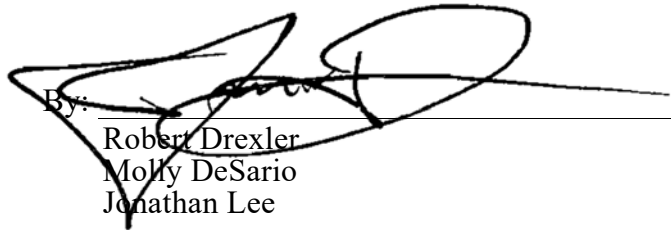
28 5. For pre-judgment and post-judgment interest as provided by law; and

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: January 24, 2022

Respectfully submitted,

Capstone Law APC

6
7  By: _____
8 Robert Drexler
9 Molly DeSario
Jonathan Lee

10 Attorneys for Rosa Esmeralda Esteban Martinez
and Mirian Gonzalez Orellano

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

November 18, 2021

VIA ONLINE SUBMISSION

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

Subject: *Rosa Esmeralda Esteban Martinez v. Pacific Catch, Inc.*

Dear PAGA Administrator:

This office represents Rosa Esmeralda Esteban Martinez in connection with her claims under the California Labor Code. Ms. Esteban Martinez was an employee of PACIFIC CATCH, INC. ("PACIFIC CATCH").

The employer may be contacted directly at the address below:

PACIFIC CATCH, INC.
770 TAMALPAIS DRIVE, SUITE 210
CORTE MADERA CA 94925

Ms. Esteban Martinez 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. Esteban Martinez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PACIFIC CATCH in California as a non-exempt, hourly paid employee 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.

PACIFIC CATCH employed Ms. Esteban Martinez as a non-exempt, hourly paid Dishwasher, Butcher, Prep Cook, and Line Cook from approximately May 2019 to May 2021. Ms. Esteban Martinez worked for PACIFIC CATCH at its restaurant located at 1200 9th Avenue in San Francisco, California. She typically worked six (6) hours or more per day, five (5) days per week, and approximately 30 hours or more per week. At the time her employment ended, Ms. Esteban Martinez was compensated approximately \$19.00 per hour. Her job duties included, without limitation, butchering, preparing, and grilling fish, and restocking the kitchen.

PACIFIC CATCH has committed one or more of the following Labor Code violations against Ms. Esteban Martinez, the facts and theories of which follow, making her an "aggrieved employee"

pursuant to California Labor Code section 2699(c):¹

PACIFIC CATCH's Company-Wide and Uniform Payroll and HR Practices

PACIFIC CATCH, INC. is a California corporation and operates approximately 12 Pacific Catch: Westcoast Fish House restaurants throughout California. Upon information and belief, PACIFIC CATCH maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Corte Madera, California, for all non-exempt, hourly paid employees working for PACIFIC CATCH in California, including Ms. Esteban Martinez and other aggrieved employees. At all relevant times, PACIFIC CATCH issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Esteban Martinez and other aggrieved employees, regardless of their location or position.

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

PACIFIC CATCH willfully failed to pay all overtime wages owed to Ms. Esteban Martinez and other aggrieved employees. During the relevant time period, Ms. Esteban Martinez 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.

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

First, during the relevant time period, PACIFIC CATCH had a company-wide policy and/or practice of discouraging and impeding Ms. Esteban Martinez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. On information and belief, this limitation was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting hours to their scheduled shifts, coupled with PACIFIC CATCH's understaffing policy and assignment of heavy workloads, led Ms. Esteban Martinez and other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, PACIFIC CATCH's management instructed Ms. Esteban Martinez to report to work 5-15 minutes early to bring in the trash cans, unlock the restaurant doors, and disarm the alarm system, before she was permitted to clock in at her scheduled shift start-time. Additionally, it was not possible for Ms. Esteban Martinez and other aggrieved employees to complete these tasks on the clock because, on information and belief, PACIFIC CATCH's timekeeping system would not permit Ms. Esteban Martinez and other aggrieved employees to clock in before their scheduled shift start times, so they would work off-the-clock to start or complete these duties. Thus, PACIFIC CATCH failed to track this time spent working before scheduled shifts, and Ms. Esteban Martinez and other aggrieved employees received no compensation for this time.

Second, during the relevant period, PACIFIC CATCH implemented, on a company-wide basis, an employer-imposed requirement that Ms. Esteban Martinez and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, Ms. Esteban Martinez and other aggrieved employees were required to spend up to five (5) minutes waiting and/or undergoing the temperature check, before being permitted to clock in for their shift. Even though PACIFIC CATCH required these temperature checks and/or health screenings, PACIFIC CATCH did not provide Ms. Esteban Martinez 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.

Third, as stated, PACIFIC CATCH had, and continues to have, a uniform practice and/or policy of understaffing its restaurant locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Moreover, PACIFIC CATCH had a practice of failing to schedule or provide meal periods at all (*see infra*), which further caused Ms. Esteban Martinez 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. Esteban Martinez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Esteban Martinez and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Fourth, on information and belief, because PACIFIC CATCH frowned upon employees accruing meal period penalties, PACIFIC CATCH pressured Ms. Esteban Martinez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that PACIFIC CATCH would otherwise owe. In conjunction with this policy, PACIFIC CATCH also pressured Ms. Esteban Martinez and other aggrieved employees who had signed invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in day, in order to limit their eligibility for meal periods they otherwise would have received. For example, several times per week, PACIFIC CATCH required Ms. Esteban Martinez to clock out at the end of her scheduled shift and continue working for 5-10 minutes, cleaning and sweeping her assigned workstation, tasks she was required by PACIFIC CATCH to complete before she could

leave for the day. Thus, Ms. Esteban Martinez and other aggrieved employees were required to perform their assigned tasks off-the-clock because PACIFIC CATCH wanted to avoid paying penalties for missed meal periods.

Furthermore, on information and belief, PACIFIC CATCH's company-wide timekeeping system prevented Ms. Esteban Martinez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Esteban Martinez 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 before 30 minutes had elapsed. Thus, PACIFIC CATCH did not record all hours worked during meal periods and Ms. Esteban Martinez and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, PACIFIC CATCH had, and continues to have, a company-wide policy and/or practice of requiring other aggrieved employees to obtain certain certificates, such as a food handler's certificate, and to keep their certificates and/or trainings up-to-date, but PACIFIC CATCH failed to compensate other aggrieved employees for this time spent doing so. For example, other aggrieved employees were required to take an online training course while they were at home, which took approximately two (2) hours to complete, but were not compensated for this time worked. Thus, PACIFIC CATCH failed to track the time other aggrieved employees spent completing the mandatory trainings, and other aggrieved employees received no compensation for this time.

PACIFIC CATCH knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Esteban Martinez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Esteban Martinez and other aggrieved employees regularly 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.

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

PACIFIC CATCH's failure to pay Ms. Esteban Martinez 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. Esteban Martinez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the

time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As stated above, PACIFIC CATCH systematically failed to pay Ms. Esteban Martinez and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. Because PACIFIC CATCH discouraged and impeded Ms. Esteban Martinez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Esteban Martinez and other aggrieved employees were required to work off-the-clock before their scheduled shift start times to complete their assigned duties. Moreover, as set forth above, Ms. Esteban Martinez and other aggrieved employees were required to undergo COVID-19 health screenings prior to clocking in for the start of their scheduled shifts, but were not compensated for this time.

Additionally, as set forth above, due to PACIFIC CATCH’s uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Ms. Esteban Martinez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated above, on information and belief, in order to limit meal penalties that PACIFIC CATCH would otherwise owe, PACIFIC CATCH pressured Ms. Esteban Martinez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods. In conjunction with this policy, PACIFIC CATCH also pressured Ms. Esteban Martinez and other aggrieved employees to clock out before they worked six (6) hours in day to limit their eligibility for meal periods, but required them to continue working, time for which they were not paid. Furthermore, as set forth above, on information and belief, PACIFIC CATCH systematically failed to pay Ms. Esteban Martinez and other aggrieved employees for actual hours worked during unpaid meal periods, because PACIFIC CATCH’s timekeeping system locked out Ms. Esteban Martinez and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Finally, as stated, other aggrieved employees were required to complete mandatory trainings and/or obtain certain certificates while at home or outside of their scheduled shifts. However, PACIFIC CATCH did not compensate other aggrieved employees for this time spent working off-the-clock.

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

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

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

First, as stated, PACIFIC CATCH had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, and failing to schedule or provide meal periods at all, which resulted in a lack of meal period coverage and prevented Ms. Esteban Martinez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Esteban Martinez 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, Ms. Esteban Martinez was required to work through her meal periods due to the heavy workload and to meet the restaurant's customer demand.

Second, as stated, on information and belief, because PACIFIC CATCH frowned upon employees accruing meal period penalties, PACIFIC CATCH's management pressured Ms. Esteban Martinez and other aggrieved employees to clock out for meal periods, upon threat of discipline, and/or would adjust Ms. Esteban Martinez's and other aggrieved employees' time records to reflect compliant meal periods, 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 PACIFIC CATCH. For example, Ms. Esteban Martinez was sometimes required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods. In conjunction with this policy, as stated, on information and belief, PACIFIC CATCH's management would also pressure Ms. Esteban Martinez and other aggrieved employees who had signed invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in day and continue working to limit their eligibility for meal periods, in order to strictly limit meal penalties that would need to be paid by PACIFIC CATCH.

Moreover, as stated, PACIFIC CATCH's company-wide timekeeping system prevented Ms. Esteban Martinez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Esteban Martinez 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 before 30 minutes had elapsed.

Also, PACIFIC CATCH did not provide Ms. Esteban Martinez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, approximately once a week, Ms. Esteban Martinez worked in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Ms. Esteban Martinez 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, PACIFIC CATCH had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. PACIFIC CATCH took the position that non-exempt, hourly paid employees had waived their rights to first and/or second 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. Furthermore, PACIFIC CATCH's meal period waiver form requires employees to provide one day's (24 hour) written notice should they wish to revoke the waiver. PACIFIC CATCH's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) 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 and in advance, discouraged and impeded Ms. Esteban Martinez 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 PACIFIC CATCH required Ms. Esteban Martinez 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 PACIFIC CATCH's obligation to provide Ms. Esteban Martinez and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times mentioned herein, PACIFIC CATCH knew or should have known that as a result of its policies, Ms. Esteban Martinez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PACIFIC CATCH further knew or should have known that it did not pay Ms. Esteban Martinez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, PACIFIC CATCH 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. Esteban Martinez and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PACIFIC CATCH did pay other aggrieved employees for missed, late, and interrupted meal periods, PACIFIC CATCH did not pay other aggrieved employees at the correct rate of pay for premiums because PACIFIC

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

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

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

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

During the relevant time period, PACIFIC CATCH regularly failed to authorize and permit Ms. Esteban Martinez 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, PACIFIC CATCH's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Esteban Martinez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. PACIFIC CATCH also failed to schedule rest periods, which, coupled with PACIFIC CATCH's failure to provide adequate rest period coverage, further led to Ms. Esteban Martinez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, PACIFIC CATCH maintained and implemented a written on-premises policy, which mandated that Ms. Esteban Martinez and/or other aggrieved employees remain on the work premises during their rest periods. Specifically, the non-compliant policy states that "[e]mployers can require team members to stay onsite during [their] 10 minute rest break. . . ." Because Ms. Esteban Martinez and/or other aggrieved employees were restricted from leaving the work 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, PACIFIC CATCH effectively maintained control over Ms. Esteban Martinez and/or other aggrieved employees during rest periods, and, as a result of this rest period policy, PACIFIC CATCH did not relinquish control over Ms. Esteban Martinez and/or other aggrieved employees during rest periods.

As a result of PACIFIC CATCH's practices and policies, Ms. Esteban Martinez 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. Esteban Martinez worked through her shifts approximately three (3) times per week without taking her 10-minute rest periods due to the workload, the lack of coverage, and failure to schedule rest periods. As a further example, Ms. Esteban Martinez would have her rest periods interrupted or cut short approximately once per week, for the same reasons.

PACIFIC CATCH 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 or permitted. Because of this practice and/or policy, Ms. Esteban Martinez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PACIFIC CATCH did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PACIFIC CATCH did not pay other aggrieved employees at the correct rate of pay for premiums because PACIFIC CATCH 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, PACIFIC CATCH failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Esteban Martinez 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. PACIFIC CATCH has not provided Ms. Esteban Martinez 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 wage 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, PACIFIC CATCH has knowingly and intentionally provided Ms. Esteban Martinez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PACIFIC CATCH issued uniform wage statements to Ms. Esteban Martinez 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, PACIFIC CATCH violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PACIFIC CATCH did not record the time Ms. Esteban Martinez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), PACIFIC CATCH did not list the correct amount of gross wages and net wages earned by Ms. Esteban Martinez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PACIFIC CATCH failed to accurately list the total number of the

hours worked by Ms. Esteban Martinez 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).

Furthermore, because PACIFIC CATCH did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, PACIFIC CATCH 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). PACIFIC CATCH 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, without limitation, 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 hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PACIFIC CATCH willfully failed to maintain accurate payroll records for Ms. Esteban Martinez 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, PACIFIC CATCH engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Ms. Esteban Martinez and other aggrieved employees in violation of section 1198. Furthermore, in light of PACIFIC CATCH's failure to provide Ms. Esteban Martinez and other aggrieved employees with second 30-minute meal periods to which they were entitled, PACIFIC CATCH kept no records of meal start and end times for second meal periods.

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

Ms. Esteban Martinez 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.

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

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

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day’s Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day’s rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof. During the relevant period, PACIFIC CATCH required Ms. Esteban Martinez and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, Ms. Esteban Martinez was required to work seven (7) consecutive days, from November 19 to 25, 2020, and December 16 to 22, 2020. Because Ms. Esteban Martinez and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Esteban Martinez and other aggrieved employees signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

Thus, PACIFIC CATCH caused Ms. Esteban Martinez and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Esteban Martinez 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 § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, PACIFIC CATCH required Ms. Esteban Martinez and other aggrieved employees to report to work in “spotless and neat,” “stain-free, pressed” uniforms bearing the PACIFIC CATCH company logo, including uniform shirts and/or hats. However, PACIFIC CATCH did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, PACIFIC CATCH only provided Ms. Esteban Martinez and other aggrieved employees with several t-shirts and one (1) hat during their employment. Because PACIFIC CATCH failed to provide Ms. Esteban Martinez 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. Esteban Martinez and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Esteban Martinez’s and other aggrieved employees’ uniforms 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 other clothing items and incur additional laundry expenses for the upkeep of their uniforms. Thus, PACIFIC CATCH failed to maintain uniforms they required Ms. Esteban

Martinez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PACIFIC CATCH could have provided Ms. Esteban Martinez and other aggrieved employees with the actual tools for use on the job, such as an adequate number of uniforms or access to laundering services. Or, PACIFIC CATCH could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, PACIFIC CATCH passed these operating costs off onto Ms. Esteban Martinez and other aggrieved employees. At all relevant times, Ms. Esteban Martinez did not earn at least two (2) times the minimum wage.

Thus, PACIFIC CATCH 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. Esteban Martinez 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.

At all relevant times, on information and belief, PACIFIC CATCH failed, on a company-wide basis, to provide written notice to Ms. Esteban Martinez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, PACIFIC CATCH failed to provide Ms. Esteban Martinez and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A), and regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that PACIFIC CATCH provided to Ms. Esteban Martinez is blank where the aforementioned wage information should be filled in. PACIFIC CATCH's failure to provide Ms. Esteban Martinez and other aggrieved employees with written notice of basic information regarding their employment with PACIFIC CATCH is in violation of Labor Code section 2810.5.

Ms. Esteban Martinez 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.” PACIFIC CATCH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Esteban Martinez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Esteban Martinez 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. Esteban Martinez, 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 PACIFIC CATCH for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. PACIFIC CATCH shall pay Ms. Esteban Martinez and all other aggrieved employees employed by PACIFIC CATCH at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. PACIFIC CATCH 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. PACIFIC CATCH shall conduct a survey or interview all current and former aggrieved employees in California who worked for PACIFIC CATCH 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 laundering expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. PACIFIC CATCH 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. PACIFIC CATCH 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. PACIFIC CATCH shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for PACIFIC CATCH's benefit, including, but not limited to, laundering expenses or other expenditures, as required by Labor Code section 2802.
6. PACIFIC CATCH shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. PACIFIC CATCH shall provide Ms. Esteban Martinez and all aggrieved employees employed by PACIFIC CATCH 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).
8. PACIFIC CATCH shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
9. PACIFIC CATCH shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. PACIFIC CATCH 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).
11. PACIFIC CATCH 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura". The signature is fluid and cursive, with the first name "Mao" being more prominent and the last name "Shiokura" written in a more compact, flowing style.

Mao Shiokura

Copy: PACIFIC CATCH, INC. (via U.S. Certified Mail)

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



7020 0090 0001 3768 0348

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770 TAMALPAIS DRIVE, SUITE 210

CORTE MADERA, CA 94925

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

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PACIFIC CATCH, INC.
770 TAMALPAIS DRIVE, SUITE 210
CORTE MADERA, CA 94925

9590 9402 4882 9032 7426 45



2. Article Number (Transfer from service label)

7020 0090 0001 3768 0348

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

☐ Yes
☒ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Registered Mail

☐ Registered Mail Restricted Delivery

☐ Priority Mail Express[®]

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☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Exhibit 2



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

November 18, 2021

VIA ONLINE SUBMISSION

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

Subject: *Mirian Gonzalez Orellano v. Pacific Catch, Inc.*

Dear PAGA Administrator:

This office represents Mirian Gonzalez Orellano in connection with her claims under the California Labor Code. Ms. Gonzalez Orellano was an employee of PACIFIC CATCH, INC. ("PACIFIC CATCH").

The employer may be contacted directly at the address below:

PACIFIC CATCH, INC.
770 TAMALPAIS DRIVE, SUITE 210
CORTE MADERA CA 94925

Ms. Gonzalez Orellano 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. Gonzalez Orellano seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PACIFIC CATCH in California as a non-exempt, hourly paid employee 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.

PACIFIC CATCH employed Ms. Gonzalez Orellano as a non-exempt, hourly paid Line Cook from approximately September 2020 to June 2021. Ms. Gonzalez Orellano worked for PACIFIC CATCH at its restaurant located at 1200 9th Avenue in San Francisco, California. She typically worked six (6) hours or more per day, five (5) days per week, and approximately 30 hours or more per week. At the time her employment ended, Ms. Gonzalez Orellano was compensated approximately \$18.00 per hour. Her job duties included, without limitation, preparing food on the line, handling orders for dine-in and delivery, and restocking her workstation.

PACIFIC CATCH has committed one or more of the following Labor Code violations against Ms. Gonzalez Orellano, the facts and theories of which follow, making her an "aggrieved employee"

pursuant to California Labor Code section 2699(c):¹

PACIFIC CATCH's Company-Wide and Uniform Payroll and HR Practices

PACIFIC CATCH, INC. is a California corporation and operates approximately 12 Pacific Catch: Westcoast Fish House restaurants throughout California. Upon information and belief, PACIFIC CATCH maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Corte Madera, California, for all non-exempt, hourly paid employees working for PACIFIC CATCH in California, including Ms. Gonzalez Orellano and other aggrieved employees. At all relevant times, PACIFIC CATCH issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Gonzalez Orellano and other aggrieved employees, regardless of their location or position.

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

PACIFIC CATCH willfully failed to pay all overtime wages owed to Ms. Gonzalez Orellano and other aggrieved employees. During the relevant time period, Ms. Gonzalez Orellano 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.

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

First, during the relevant time period, PACIFIC CATCH had a company-wide policy and/or practice of discouraging and impeding Ms. Gonzalez Orellano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. On information and belief, this limitation was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting hours to their scheduled shifts, coupled with PACIFIC CATCH's understaffing policy and assignment of heavy workloads, led Ms. Gonzalez Orellano and/or other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, PACIFIC CATCH's management instructed other aggrieved employees to report to work 5-15 minutes early to bring in the trash cans, unlock the restaurant doors, and disarm the alarm system, before they were permitted to clock in at their scheduled shift start-times. Additionally, it was not possible for Ms. Gonzalez Orellano and/or other aggrieved employees to complete these tasks on the clock because, on information and belief, PACIFIC CATCH's timekeeping system would not permit Ms. Gonzalez Orellano and/or other aggrieved employees to clock in before their scheduled shift start times, so they would work off-the-clock to start or complete these duties. Thus, PACIFIC CATCH failed to track this time spent working before scheduled shifts, and Ms. Gonzalez Orellano and/or other aggrieved employees received no compensation for this time.

Second, during the relevant period, PACIFIC CATCH implemented, on a company-wide basis, an employer-imposed requirement that Ms. Gonzalez Orellano and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, Ms. Gonzalez Orellano and other aggrieved employees were required to spend up to five (5) minutes waiting and/or undergoing the temperature check, before being permitted to clock in for their shift. Even though PACIFIC CATCH required these temperature checks and/or health screenings, PACIFIC CATCH did not provide Ms. Gonzalez Orellano 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.

Third, as stated, PACIFIC CATCH had, and continues to have, a uniform practice and/or policy of understaffing its restaurant locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Moreover, PACIFIC CATCH had a practice of failing to schedule or provide meal periods at all (*see infra*), which further caused Ms. Gonzalez Orellano 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. Gonzalez Orellano and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Gonzalez Orellano and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Fourth, on information and belief, because PACIFIC CATCH frowned upon employees accruing meal period penalties, PACIFIC CATCH pressured Ms. Gonzalez Orellano and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that PACIFIC CATCH would otherwise owe. In conjunction with this policy, PACIFIC CATCH also pressured Ms. Gonzalez Orellano and other aggrieved employees who had signed invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in day, in order to limit their eligibility for meal periods they otherwise would have received. For example, several times per week, PACIFIC CATCH required Ms. Gonzalez Orellano to clock out at the end of her scheduled shift and continue working for 5-10 minutes, cleaning the kitchen and taking out the trash, tasks she was required by PACIFIC CATCH to complete before she could leave for the

day. Thus, Ms. Gonzalez Orellano and other aggrieved employees were required to perform their assigned tasks off-the-clock because PACIFIC CATCH wanted to avoid paying penalties for missed meal periods.

Furthermore, on information and belief, PACIFIC CATCH's company-wide timekeeping system prevented Ms. Gonzalez Orellano and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Gonzalez Orellano 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 before 30 minutes had elapsed. Thus, PACIFIC CATCH did not record all hours worked during meal periods and Ms. Gonzalez Orellano and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, PACIFIC CATCH had, and continues to have, a company-wide policy and/or practice of requiring Ms. Gonzalez Orellano and other aggrieved employees to obtain certain certificates, such as a food handler's certificate, and to keep their certificates and/or trainings up-to-date, but PACIFIC CATCH failed to compensate Ms. Gonzalez Orellano and other aggrieved employees for this time spent doing so. For example, Ms. Gonzalez Orellano was required to take an online training course while she was at home, which took approximately two (2) hours to complete, but was not compensated for this time worked. Thus, PACIFIC CATCH failed to track the time Ms. Gonzalez Orellano and other aggrieved employees spent completing the mandatory trainings, and Ms. Gonzalez Orellano and other aggrieved employees received no compensation for this time.

PACIFIC CATCH knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Gonzalez Orellano and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Gonzalez Orellano and other aggrieved employees regularly 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.

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

PACIFIC CATCH's failure to pay Ms. Gonzalez Orellano 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. Gonzalez Orellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum

so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As stated above, PACIFIC CATCH systematically failed to pay Ms. Gonzalez Orellano and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. Because PACIFIC CATCH discouraged and impeded Ms. Gonzalez Orellano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Gonzalez Orellano and/or other aggrieved employees were required to work off-the-clock before their scheduled shift start times to complete their assigned duties. Moreover, as set forth above, Ms. Gonzalez Orellano and other aggrieved employees were required to undergo COVID-19 health screenings prior to clocking in for the start of their scheduled shifts, but were not compensated for this time.

Additionally, as set forth above, due to PACIFIC CATCH’s uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Ms. Gonzalez Orellano and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated above, on information and belief, in order to limit meal penalties that PACIFIC CATCH would otherwise owe, PACIFIC CATCH pressured Ms. Gonzalez Orellano and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods. In conjunction with this policy, PACIFIC CATCH also pressured Ms. Gonzalez Orellano and other aggrieved employees to clock out before they worked six (6) hours in day to limit their eligibility for meal periods, but required them to continue working, time for which they were not paid. Furthermore, as set forth above, on information and belief, PACIFIC CATCH systematically failed to pay Ms. Gonzalez Orellano and other aggrieved employees for actual hours worked during unpaid meal periods, because PACIFIC CATCH’s timekeeping system locked out Ms. Gonzalez Orellano and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Finally, as stated, Ms. Gonzalez Orellano and other aggrieved employees were required to complete mandatory trainings and/or obtain certain certificates while at home or outside of their scheduled shifts. However, PACIFIC CATCH did not compensate Ms. Gonzalez Orellano and other aggrieved employees for this time spent working off-the-clock.

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

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

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

First, as stated, PACIFIC CATCH had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, and failing to schedule or provide meal periods at all, which resulted in a lack of meal period coverage and prevented Ms. Gonzalez Orellano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Gonzalez Orellano 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, Ms. Gonzalez Orellano was required to work through her meal periods due to the heavy workload and to meet the restaurant's customer demand.

Second, as stated, on information and belief, because PACIFIC CATCH frowned upon employees accruing meal period penalties, PACIFIC CATCH's management pressured Ms. Gonzalez Orellano and other aggrieved employees to clock out for meal periods, upon threat of discipline, and/or would adjust Ms. Gonzalez Orellano's and other aggrieved employees' time records to reflect compliant meal periods, 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 PACIFIC CATCH. For example, Ms. Gonzalez Orellano was sometimes required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods. In conjunction with this policy, as stated, on information and belief, PACIFIC CATCH's management would also pressure Ms. Gonzalez Orellano and other aggrieved employees who had signed invalid meal period waivers (*see infra*) to clock out before they had worked six (6) hours in day and continue working to limit their eligibility for meal periods, in order to strictly limit meal penalties that would need to be paid by PACIFIC CATCH.

Moreover, as stated, PACIFIC CATCH's company-wide timekeeping system prevented Ms. Gonzalez Orellano and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Gonzalez Orellano 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 before 30 minutes had elapsed.

Also, PACIFIC CATCH did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Gonzalez Orellano 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, PACIFIC CATCH had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. PACIFIC CATCH took the position that non-exempt, hourly paid employees had waived their rights to first and/or second 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. Furthermore, PACIFIC CATCH's meal period waiver form requires employees to provide one day's (24 hour) written notice should they wish to revoke the waiver. PACIFIC CATCH's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) 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 and in advance, discouraged and impeded Ms. Gonzalez Orellano 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 PACIFIC CATCH required Ms. Gonzalez Orellano 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 PACIFIC CATCH's obligation to provide Ms. Gonzalez Orellano and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times mentioned herein, PACIFIC CATCH knew or should have known that as a result of its policies, Ms. Gonzalez Orellano and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PACIFIC CATCH further knew or should have known that it did not pay Ms. Gonzalez Orellano and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, PACIFIC CATCH 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. Gonzalez Orellano and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PACIFIC CATCH did pay other aggrieved employees for missed, late, and interrupted meal periods, PACIFIC CATCH did not pay other aggrieved employees at the correct rate of pay for premiums because PACIFIC CATCH 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, PACIFIC CATCH failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Gonzalez Orellano and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, PACIFIC CATCH regularly failed to authorize and permit Ms. Gonzalez Orellano 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, PACIFIC CATCH's policies and/or practices of understaffing and assigning heavy workloads prevented Ms. Gonzalez Orellano and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. PACIFIC CATCH also failed to schedule rest periods, which, coupled with PACIFIC CATCH's failure to provide adequate rest period coverage, further led to Ms. Gonzalez Orellano and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, PACIFIC CATCH maintained and implemented a written on-premises policy, which mandated that Ms. Gonzalez Orellano and/or other aggrieved employees remain on the work premises during their rest periods. Specifically, the non-compliant policy states that "[e]mployers can require team members to stay onsite during [their] 10 minute rest break. . . ." Because Ms. Gonzalez Orellano and/or other aggrieved employees were restricted from leaving the work 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, PACIFIC CATCH effectively maintained control over Ms. Gonzalez Orellano and/or other aggrieved employees during rest periods, and, as a result of this rest period policy, PACIFIC CATCH did not relinquish control over Ms. Gonzalez Orellano and/or other aggrieved employees during rest periods.

As a result of PACIFIC CATCH's practices and policies, Ms. Gonzalez Orellano 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. Gonzalez Orellano often worked through her shifts without taking her 10-minute rest periods due to the workload, the lack of coverage, and failure to schedule rest periods.

PACIFIC CATCH 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 or permitted. Because of this practice and/or policy, Ms. Gonzalez Orellano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PACIFIC CATCH did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PACIFIC CATCH did not pay other aggrieved employees at the correct rate of pay for premiums because PACIFIC CATCH 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, PACIFIC CATCH failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Gonzalez Orellano 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. PACIFIC CATCH has not provided Ms. Gonzalez Orellano 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 wage 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, PACIFIC CATCH has knowingly and intentionally provided Ms. Gonzalez Orellano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PACIFIC CATCH issued uniform wage statements to Ms. Gonzalez Orellano 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, PACIFIC CATCH violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PACIFIC CATCH did not record the time Ms. Gonzalez Orellano and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), PACIFIC CATCH did not list the correct amount of gross wages and net wages earned by Ms. Gonzalez Orellano and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PACIFIC CATCH failed to accurately list the total number of the hours worked by Ms. Gonzalez Orellano 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).

Furthermore, because PACIFIC CATCH did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums,

PACIFIC CATCH 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). PACIFIC CATCH 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, without limitation, 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 hours worked off-the-clock.

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

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

Ms. Gonzalez Orellano 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.

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

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

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day’s Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day’s rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, PACIFIC CATCH required other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. Because other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

Thus, PACIFIC CATCH caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. 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 § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, PACIFIC CATCH required Ms. Gonzalez Orellano and other aggrieved employees to report to work in “spotless and neat,” “stain-free, pressed” uniforms bearing the PACIFIC CATCH company logo, including uniform shirts and/or hats. However, PACIFIC CATCH did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, PACIFIC CATCH only provided Ms. Gonzalez Orellano and other aggrieved employees with several t-shirts and one (1) hat during their employment. Because PACIFIC CATCH failed to provide Ms. Gonzalez Orellano 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. Gonzalez Orellano and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Gonzalez Orellano’s and other aggrieved employees’ uniforms 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 other clothing items and incur additional laundry expenses for the upkeep of their uniforms. Thus, PACIFIC CATCH failed to maintain uniforms they required Ms. Gonzalez Orellano and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PACIFIC CATCH could have provided Ms. Gonzalez Orellano and other aggrieved employees with the actual tools for use on the job, such as an adequate number of uniforms or access to laundering services. Or, PACIFIC CATCH could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, PACIFIC CATCH passed these operating costs off onto Ms. Gonzalez Orellano and other aggrieved employees. At all relevant times, Ms. Gonzalez Orellano did not earn at least two (2) times the minimum wage.

Thus, PACIFIC CATCH 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. Gonzalez Orellano 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.

At all relevant times, on information and belief, PACIFIC CATCH failed, on a company-wide basis, to provide written notice to Ms. Gonzalez Orellano and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, PACIFIC CATCH failed to provide Ms. Gonzalez Orellano and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A), and regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that PACIFIC CATCH provided to Ms. Gonzalez Orellano is blank where the aforementioned wage information should be filled in. PACIFIC CATCH's failure to provide Ms. Gonzalez Orellano and other aggrieved employees with written notice of basic information regarding their employment with PACIFIC CATCH is in violation of Labor Code section 2810.5.

Ms. Gonzalez Orellano 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.” PACIFIC CATCH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Gonzalez Orellano’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Gonzalez Orellano 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. Gonzalez Orellano, 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 PACIFIC CATCH for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. PACIFIC CATCH shall pay Ms. Gonzalez Orellano and all other aggrieved employees employed by PACIFIC CATCH at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. PACIFIC CATCH 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. PACIFIC CATCH shall conduct a survey or interview all current and former aggrieved employees in California who worked for PACIFIC CATCH 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 laundering expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. PACIFIC CATCH 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. PACIFIC CATCH 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. PACIFIC CATCH shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for PACIFIC CATCH's benefit, including, but not limited to, laundering expenses or other expenditures, as required by Labor Code section 2802.
6. PACIFIC CATCH shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. PACIFIC CATCH shall provide Ms. Gonzalez Orellano and all aggrieved employees employed by PACIFIC CATCH 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).
8. PACIFIC CATCH shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
9. PACIFIC CATCH shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. PACIFIC CATCH 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).
11. PACIFIC CATCH 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:

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

Best Regards,



Mao Shiokura

Copy: PACIFIC CATCH, INC. (via U.S. Certified Mail)

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

CERTIFIED MAIL[®]



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☐ Adult Signature Restricted Delivery \$

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Date

Postage

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Total Postage and Fees

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(Signature)
V.
Pacific Catch

Sent To Pacific Catch, Inc.

770 TAMALPAIS DRIVE, SUITE 210

CORTE MADERA, CA 94925

PS Form 3800, April 2015 PSN 7530-02-000-9053

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PACIFIC CATCH, INC.
770 TAMALPAIS DRIVE, SUITE 210
CORTE MADERA, CA 94925



9590 9402 4882 9032 7426 38

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0331

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

PACIFIC CATCH, INC.
770 TAMALPAIS DRIVE, SUITE 210
CORTE MADERA, CA 94925



9590 9402 4882 9032 7426 45

2. Article Number (Transfer from service label)

7020 0090 0001 3768 0348

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

Domestic Return Receipt