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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE

GEORGE SEITZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

NOR CAL FAST FOODS , INC., a
California corporation; and DOES 1
through 10, inclusive,

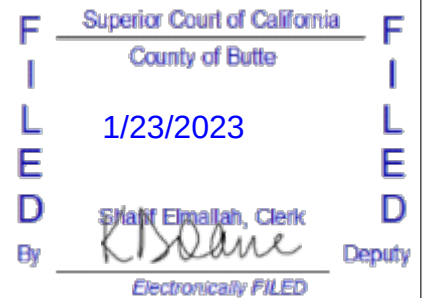
Defendants.

Case No.: 22CV00303

**FIRST AMENDED 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 Plaintiff Georg Seitz and Makaili S. Pepper, as aggrieved employees and on behalf of
2 the State of California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

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

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

9 THE PARTIES

10 6. Plaintiff George Seitz is a resident of the city of Oroville in Butte County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Shift Lead and
12 Crew Member from approximately December 2019 to December 2020. Plaintiff worked for
13 Defendants at their Burger King restaurant located at 855 Oro Dam Blvd. East, in Oroville,
14 California (#4091). Plaintiff typically worked eight (8) hours or more per day, four (4) to
15 seven (7) days per week, and approximately 40 hours or more per week. Plaintiff was
16 compensated approximately \$13.00 per hour. His job duties included, without limitation,
17 performing inventory, making bank deposits, preparing food, taking orders, and cleaning and
18 maintaining the premises.

19 7. Plaintiff Makaili S. Pepper is a resident of the city of Linda in Yuba County,
20 California. Defendants employed Plaintiff as an hourly paid, non-exempt Crew Member from
21 approximately July 2020 to October 2021. Plaintiff worked for Defendants at their Burger
22 King restaurant located at 1581 Poole Blvd, in Yuba City, California. Plaintiff typically
23 worked five (5) to six (6) hours or more per day, five (5) to six (6) days per week, and
24 approximately 25 hours or more per week. Plaintiff was compensated approximately \$14.00
25 per hour. Her job duties included, without limitation, preparing food, taking orders, and
26 cleaning and maintaining the premises.

27 8. On information and belief, Defendants required some employees, including
28 Plaintiffs, to execute an arbitration agreement at the time of their hire or during their

1 employment. On further information and belief, Defendants' arbitration agreement was and is
2 both procedurally and substantively unconscionable. Specifically, Defendants presented
3 employees with an "Arbitration Agreement" which had to be reviewed and signed
4 immediately. The Arbitration Agreement was one of several documents presented to new
5 employees for signature during the orientation process, including the California Meal Period
6 and Rest Break Policy Acknowledgement, California Meal Period Waiver, and Day 1
7 Orientation: New Employee Tasks, among other documents. Also, employees did not have a
8 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
9 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
10 all of the other on-boarding documents. Furthermore, Defendants did not set forth in the
11 agreement or otherwise provide employees with the rules which will govern the arbitration,
12 instead forcing employees to seek this information out on their own.

13 9. NOR CAL FAST FOODS , INC. was and is, upon information and belief, a
14 California corporation, and at all times hereinafter mentioned, an employer whose employees
15 are engaged throughout this county and the State of California.

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

20 11. Plaintiffs are informed and believes, and thereon alleges, that DOES 1 through
21 10 were the partners, agents, owners, or managers of NOR CAL FAST FOODS, INC. at all
22 relevant times.

23 12. Plaintiffs are informed and believe, and thereon allege, that each and all of the
24 acts and omissions alleged herein was performed by, or is attributable to, NOR CAL FAST
25 FOODS, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "NORCAL"), each
26 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
27 each of the other co-Defendants and was acting within the course and scope of such agency,
28 employment, joint venture, or concerted activity with legal authority to act on the others'

1 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
2 policy of Defendants.

3 13. At all relevant times, Defendants, and each of them, ratified each and every act
4 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
5 and abetted the acts and omissions of each and all the other Defendants in proximately causing
6 the damages herein alleged.

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

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 15. Defendants own and operate approximately 14 Burger King franchise
12 restaurant locations in northern California. Upon information and belief, Defendants maintain
13 a centralized Human Resources (“HR”) department at their corporate headquarters in
14 Pleasanton, California, which is responsible for the recruiting and hiring of new employees,
15 and communicating and implementing Defendants’ company-wide policies, including
16 timekeeping policies and meal and rest period policies, to employees throughout California.

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

24 17. Upon information and belief, Defendants maintain a centralized Payroll
25 department at their corporate headquarters in Pleasanton, California, which processes payroll
26 for all non-exempt, hourly paid employees working for Defendants at their various locations
27 and jobsites in California, including Plaintiffs and other non-party Aggrieved Employees.
28 Based upon information and belief, Defendants issue the same formatted wage statements to

1 all non-exempt, hourly paid employees in California, irrespective of their work locations.
2 Upon information and belief, Defendants process payroll for departing employees in the same
3 manner throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

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

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

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

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

18 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that other non-party Aggrieved Employees were entitled to be paid at a
20 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
21 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
22 compensation, but failed to incorporate all forms of remuneration in calculating the regular
23 rate of pay for other non-party Aggrieved Employees.

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

1 least minimum wages for work done off-the-clock.

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

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

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

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

28 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew

1 or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled
2 to timely payment of wages during their employment. In violation of the California Labor
3 Code, Plaintiffs and other non-party Aggrieved Employees did not receive payment of all
4 wages, including, but not limited to, overtime wages, minimum wages, meal and rest period
5 premiums, and/or reporting time pay, within permissible time periods.

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

12 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 one day's rest in seven. In violation of the California Labor Code, Defendants required
15 Plaintiffs and other non-party Aggrieved Employees to work more than six consecutive days
16 without a day of rest, where the total hours worked exceeded 30 hours in any week or six
17 hours in any one day thereof.

18 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 suitable resting facilities to cease work and recover during meal or rest periods, but failed to
21 provide suitable resting facilities.

22 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 suitable seating and/or were entitled to sit when it did not interfere with the performance of
25 their duties and have seats nearby to use during a lull in tasks that do require moving about or
26 standing. In violation of the California Labor Code and applicable IWC Wage Order,
27 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees suitable
28 seating.

1 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that other non-party Aggrieved Employees were entitled to be paid
3 reporting time pay when they reported to work for their scheduled shift but were put to work
4 for less than half of the regular schedule. In violation of the California Labor Code,
5 Defendants did not pay other non-party Aggrieved Employees all reporting time pay due.

6 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 be paid split shift premiums when they returned to work for an additional shift in the same
9 day, after having been clocked out for more than an hour. In violation of the California Labor
10 Code, Defendants did not pay Plaintiffs and other non-party Aggrieved Employees all split
11 shift premiums due.

12 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 receive reimbursement for all business-related expenses and costs they incurred during the
15 course and scope of their employment and that they did not receive reimbursement of
16 applicable business-related expenses and costs incurred.

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

22 37. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiffs
24 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
25 life, safety, and health in the workplace, but failed to do so.

26 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants

1 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
2 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
3 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

13 41. Plaintiffs and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

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

- 19 (a) The aggrieved employee shall give written notice by online filing
20 (hereinafter "Employee's Notice") to the LWDA and by certified mail
21 to the employer of the specific provisions of the California Labor Code
22 alleged to have been violated, including the facts and theories to support
23 the alleged violations.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within sixty (60) calendar
2 days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
4 five (65) calendar days of the postmark date of the Employee's Notice,
5 the aggrieved employee may commence a civil action pursuant to
6 California Labor Code section 2699 to recover civil penalties in addition
7 to any other penalties to which the employee may be entitled.

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

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing to the LWDA and by certified mail to the employer of the
14 specific provisions of the California Labor Code alleged to have been
15 violated (other than those listed in Section 2699.5), including the facts
16 and theories to support the alleged violation.
- 17 (b) An aggrieved employee's notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice. The employer shall
22 give written notice by certified mail within that period of time to the
23 aggrieved employee or representative and the agency if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the employee may commence a
27 civil action pursuant to Section 2699.

28 44. On December 9, 2021, Plaintiff Seitz provided written notice by online filing to

1 the LWDA and by certified mail to Defendants of the specific provisions of the California
2 Labor Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-856872-21. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants dated December 9, 2021 is attached hereto as
8 "Exhibit 1."

9 45. On November 11, 2021, Plaintiff Pepper provided written notice by online
10 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including facts and theories to support
12 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's
13 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
14 The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and
15 assigned Plaintiff PAGA Case Number LWDA-CM-852077-21. A true and correct copy of
16 Plaintiff's written notice to the LWDA and Defendants dated November 11, 2021 is attached
17 hereto as "Exhibit 2."

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

21 47. Thus, Plaintiffs have satisfied the administrative prerequisites under California
22 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
23 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
24 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

25 48. Labor Code section 558(a) provides "[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare
28 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty

1 dollars (\$50) for each underpaid employee for each pay period for which the employee was
2 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
4 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
5 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest
6 as a private attorney general, seeks assessment and collection of civil penalties under Labor
7 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
8 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 551,
9 552, and 1198, and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as
10 a private attorney general, does not seek the recovery of unpaid wages under Labor Code
11 section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552,
12 and 1198, and the applicable IWC Wage Order.

13 49. Defendants, at all times relevant to this complaint, were employers or persons
14 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
15 Employees’ rights by violating various sections of the California Labor Code as set forth
16 above.

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

20 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as a
22 private attorney general, seeks assessment and collection of civil penalties for himself, all
23 other non-party Aggrieved Employees, and the State of California against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
25 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 52. Plaintiffs incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 53. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
9 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
10 permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of
11 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12,
12 2810.5, 6401, and 6403.

13 54. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiffs and other
17 non-party Aggrieved Employees with all required overtime pay and
18 failure to properly calculate the overtime rates paid to other non-party
19 Aggrieved Employees, as set forth below;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
21 the applicable IWC Wage Order for Defendants’ failure to compensate
22 Plaintiffs and other non-party Aggrieved Employees with at least
23 minimum wages for all hours worked, as set forth below;
- 24 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
25 applicable IWC Wage Order for Defendants’ failure to provide
26 Plaintiffs and other non-party Aggrieved Employees with meal periods,
27 as set forth below;
- 28 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiffs and other non-party Aggrieved Employees to take rest
3 periods, as set forth below;

4 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiffs and other non-party Aggrieved Employees, as
7 set forth below;

8 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
9 IWC Wage Order for failure to maintain payroll records, as set forth
10 below;

11 (g) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment, as set forth below;

13 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
14 earned wages upon termination, as set forth below;

15 (i) Violation of Labor Code sections 551 and 552 for failure to provide one
16 day's rest in seven to Plaintiffs and other non-party Aggrieved
17 Employees, as set forth below;

18 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
19 Order for failure to provide suitable resting facilities to Plaintiffs and
20 other non-party Aggrieved Employees, as set forth below;

21 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
22 Order for failing to provide suitable seating to Plaintiffs and other
23 non-party Aggrieved Employees, as set forth below;

24 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
25 Order for failure to pay reporting time pay when other non-party
26 Aggrieved Employees were put to work for less than half of their
27 regular scheduled shifts, as set forth below;

28 (m) Violation of Labor Code section 1198 and the applicable IWC Wage

Order for failure to pay split-shift premiums when Plaintiffs and other non-party Aggrieved Employees returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as set forth below;

(n) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below;

(o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below; and

(p) Violation of Labor Code sections 6401 and 6403 for failure to provide Plaintiffs and other non-party Aggrieved Employees with safety devices and safeguards for the workplace, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

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

57. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved 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

1 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
2 (40) hours in a workweek.

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

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

14 60. Defendants willfully failed to pay all overtime wages owed to Plaintiffs and
15 other non-party Aggrieved Employees. During the relevant time period, Plaintiffs and other
16 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
17 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
18 excess of forty (40) hours in a week, because all hours that they worked were not recorded.

19 61. First, during the relevant time period, Defendants had a company-wide policy
20 and/or practice of discouraging and impeding Plaintiffs and other non-party Aggrieved
21 Employees from recording hours worked that were outside of their scheduled shifts, in order
22 to limit the amount of overtime employees could accrue. On information and belief, this
23 limitation on overtime accrual was based on a company-wide policy of staffing restaurant
24 locations strictly based on the labor hours or labor budget set by corporate. Defendants'
25 management informed Plaintiffs that the labor budget was to be 12% of the location's total
26 sales. This policy of limiting overtime, coupled with Defendants' understaffing policy and
27 assignment of heavy workloads, led Plaintiffs and other non-party Aggrieved Employees to
28 work off-the-clock before and after their scheduled shift times in order to complete their

1 assigned tasks.

2 62. For example, Defendants' management would require Plaintiffs to run errands
3 or assist other employees at work before he was permitted to clock in at his scheduled shift
4 start-time. Defendants' supervisors would frequently ask Plaintiff Seitz to drive and pick up
5 ingredients or supplies (such as tomatoes, bags, and burger patties) from Defendants' other
6 restaurant locations in Chico, Willows, and Marysville, California, or purchase supplies from
7 a grocery store on his way to work and off-the-clock, which could take 10-90 minutes each
8 time, work for which he was not paid. Plaintiff Pepper would also be required to pick up
9 supplies (such as ice, bread, and French fries) from Yuba City to Linda, California without
10 being reimbursed for her mileage. In addition, Defendants' supervisors instructed Plaintiff
11 Seitz to clock out and continue working—performing inventory, cleaning the premises,
12 checking on and preparing ingredients for the following day, completing paperwork, and
13 making bank deposits, but Defendants did not compensate him for this time. Other non-party
14 Aggrieved Employees were also required to work while off-the-clock, providing customer
15 service, communicating with other employees, and logging into and out of computer and
16 phone systems.

17 63. Moreover, Plaintiffs and other non-party Aggrieved Employees were required
18 to respond to their personal mobile devices and complete other work-related tasks on their
19 days off. For example, while off-the-clock, Plaintiff Seitz was required to respond to phone
20 calls and text messages regarding errands that Defendants' management assigned to him, such
21 as bank drops and obtaining supplies and ingredients from other locations. Likewise, Plaintiff
22 Pepper was also required to use her personal cell phone for work-related calls and
23 photographs without reimbursement. Defendants' management would also contact other non-
24 party Aggrieved Employees on their days off and instruct them to drive over to their
25 restaurants to power wash sidewalks, on threat of discipline. Defendants also required
26 Plaintiffs and other non-party Aggrieved Employees to complete online training modules,
27 such as food safety training, while off-the-clock, but failed to compensate Plaintiffs and other
28 non-party Aggrieved Employees for this time spent doing so. For example, Plaintiffs were

1 required to take an online training course while he was clocked out, which took approximately
2 1.5 hours to complete, time for which he was not paid. Thus, Defendants failed to track this
3 time spent working before and after scheduled shifts, and Plaintiffs and other non-party
4 Aggrieved Employees received no compensation for this time.

5 64. Second, during the relevant period, Defendants implemented, on a company-
6 wide basis, an employer-imposed requirement that Plaintiffs and other non-party Aggrieved
7 Employees undergo mandatory COVID-19 temperature checks and/or health screenings
8 before clocking in for their scheduled shifts. Prior to each shift, Plaintiffs and other non-party
9 Aggrieved Employees were required to spend time waiting and/or undergoing the temperature
10 check, before being permitted to clock in for their shift. Even though Defendants required
11 these temperature checks and/or health screenings, Defendants did not provide Plaintiffs and
12 other non-party Aggrieved Employees a mechanism to record this time worked so they could
13 be compensated for the time spent undergoing mandatory temperature checks and/or health
14 screenings.

15 65. Third, as stated, Defendants had, and continue to have, a uniform practice
16 and/or policy of understaffing their restaurant locations, pursuant to their labor budget, which
17 resulted in a lack of adequate meal period coverage, because there were too few employees on
18 duty to handle the heavy workload. Because Defendants did not employ or staff an adequate
19 number of employees to meet their expectations, there was no one available to relieve
20 employees needing meal period coverage, and Plaintiffs and other non-party Aggrieved
21 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
22 they were entitled to receive a meal period. For example, Plaintiff Seitz missed his meal
23 periods twice per week and had them interrupted almost daily due to understaffing, the heavy
24 workload, and subsequent lack of coverage. Defendants also had a practice of failing to
25 schedule meal periods, which further caused Plaintiffs and other non-party Aggrieved
26 Employees to not be relieved of their duties for compliant meal periods. Consequently,
27 Plaintiffs and other non-party Aggrieved Employees were required to work through and/or had
28 their unpaid meal periods interrupted in order to complete their assigned duties and handle

1 customer demand, time for which they were not paid.

2 66. In conjunction with understaffing their restaurants, on information and belief,
3 Defendants had a requirement that a managerial employee, such as a shift lead, be present on
4 the floor at all times and prohibited managers from leaving the premises unless another
5 manager was also on duty, resulting in a lack of meal period coverage for managerial
6 employees. At the same time, the labor budgets Defendants implemented did not always
7 allow for more than one manager to be on the schedule at all times. As a result, Plaintiff Seitz
8 and other non-party Aggrieved Employees were sometimes the only managers on duty, and
9 were expected to supervise the restaurant and respond to customer complaints at all times.
10 Because managerial employees were effectively prohibited from leaving Defendants'
11 premises for meal periods without coverage, and because there were too few employees and
12 other managers on duty to handle the workload and attend to customers, Plaintiff Seitz and
13 other non-party Aggrieved Employees were denied uninterrupted 30-minute meal periods, and
14 were required to work through and/or to return early from meal periods. For example,
15 Plaintiff Seitz missed his meal periods or had his meal periods interrupted in order to address
16 customer demand.

17 67. Fourth, on information and belief, because Defendants frowned upon
18 employees accruing meal period penalties, Defendants pressured Plaintiffs and other non-
19 party Aggrieved Employees to clock out for meal periods, on threat of discipline, and/or
20 adjusted their time records to reflect compliant meal periods, even when they did not receive a
21 compliant meal period, in order to strictly limit meal penalties that Defendants would
22 otherwise owe. Thus, Plaintiffs and other non-party Aggrieved Employees performed work
23 during meal periods for which they were not paid. Furthermore, on information and belief,
24 Defendants' company-wide timekeeping system prevented Plaintiffs and other non-party
25 Aggrieved Employees from recording all hours worked when their meal periods were
26 shortened or interrupted, because the system locked out Plaintiff and other non-party
27 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
28 clock back in from a meal period before 30 minutes had elapsed. Thus, Defendants did not

1 record all hours worked during meal periods, and Plaintiffs and other non-party Aggrieved
2 Employees performed work during meal periods for which they were not paid.

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

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

20 70. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 the balance of overtime compensation as required by California law, violates the provisions of
22 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY MINIMUM WAGES**

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

27 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
28 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage

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

6 72. As set forth above, Defendants systematically failed to pay Plaintiffs and other
7 non-party Aggrieved Employees for actual hours worked before and after scheduled shifts,
8 because these hours were not accurately recorded. Because Defendants discouraged and
9 impeded Plaintiffs and other non-party Aggrieved Employees from recording hours worked
10 that were outside of their scheduled shifts, Plaintiffs and other non-party Aggrieved
11 Employees were required to work off-the-clock before and after their scheduled shift start
12 times to complete their assigned duties, including, but not limited to, running errands, making
13 bank deposits, performing inventory, responding to phone calls and text messages, and
14 completing mandatory online training modules. Moreover, as set forth above, Plaintiffs and
15 other non-party Aggrieved Employees were required to undergo COVID-19 health screenings
16 prior to clocking in for the start of their scheduled shifts, but were not compensated for this
17 time.

18 73. Additionally, as stated above, due to Defendants’ uniform practices of utilizing
19 labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods,
20 subsequent lack of meal period coverage, and/or policy requiring managerial employees to
21 stay on or near the premises during meal periods, Plaintiffs and other non-party Aggrieved
22 Employees were impeded from taking all uninterrupted meal periods to which they were
23 entitled and were required to work during their meal periods, time for which they were not
24 paid. Moreover, as stated above, on information and belief, in order to limit meal penalties
25 that Defendants would otherwise owe, Defendants pressured Plaintiffs and other non-party
26 Aggrieved Employees to clock out for meal periods, on threat of discipline, and/or adjusted
27 employee time records to reflect compliant meal periods. Furthermore, as set forth above, on
28 information and belief, Defendants systematically failed to pay Plaintiffs and other non-party

1 Aggrieved Employees for actual hours worked during unpaid meal periods, because
2 Defendants' timekeeping system locked out Plaintiffs and other non-party Aggrieved
3 Employees for 30 minutes when they clocked out for a meal period.

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

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

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

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

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

25 78. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 79. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and

1 1198, and the applicable IWC Wage Order also require employers to provide a second meal
2 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
3 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
4 the total hours worked is no more than twelve (12) hours, the second meal period may be
5 waived by mutual consent of the employer and the employee only if the first meal period was
6 not waived.

7 80. First, during the relevant time period, Defendants maintained a company-wide,
8 unlawful written meal period policy insofar as it fails to state the timing of when meal periods
9 must occur. Under California law, first meal periods must start after no more than five (5)
10 hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, Defendants' written meal period
11 policy only states, in part: "I am entitled to an unpaid, uninterrupted 30 minute meal period
12 when I work a shift that is over five hours." Defendants' written policy fails to state the
13 correct timing of when the first meal period must take place (i.e., within the first five (5) hours
14 of work) under California law and is therefore facially invalid.

15 81. Second, as stated, Defendants had, and continue to have, company-wide
16 policies and/or practices of understaffing locations due to labor budgeting, which, combined
17 with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal
18 period coverage and prevented Plaintiff and other non-party Aggrieved Employees from
19 taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with
20 understaffing their restaurants, as stated above, on information and belief, Defendants had a
21 requirement that a managerial employee be present on the restaurant floor at all times, but
22 Defendants' labor budgets did not always allow for more than one manager to be on the
23 schedule at all times. As a result, Plaintiff Seitz and other managerial employees were
24 sometimes the only managers on duty, and would have their meal periods interrupted or would
25 work through them in order to assist their coworkers and customers. Thus, Plaintiff Seitz and
26 other non-party Aggrieved Employees had to work through all or part of their meal periods,
27 had their meal periods interrupted, and/or had to wait extended periods of time before taking
28 meal periods. Plaintiff Seitz was often required to take his meal periods late after having

1 worked in excess of five (5) hours or more into his shift in order to meet the restaurant's
2 customer demand, such as the dinner rush hour. For example, Plaintiff Seitz's time punches
3 indicate he took his meal period late on December 11, 2020, after more than 5 hours and 46
4 minutes of work. Moreover, Plaintiff Seitz's meal periods were interrupted several times per
5 week by Defendants' managers calling his personal cellular phone to discuss work-related
6 matters or were cut short by 20 minutes in order to return to work assisting his coworkers or
7 customers.

8 82. Third, as stated, on information and belief, because Defendants frowned upon
9 employees accruing meal period penalties, Defendants' management pressured Plaintiffs and
10 other non-party Aggrieved Employees to clock out for meal periods, upon threat of discipline,
11 and/or would adjust Plaintiff's and other non-party Aggrieved Employees' time records to
12 reflect compliant meal periods, regardless of whether they had received a compliant meal
13 period or not, in order to strictly limit meal penalties that would need to be paid by
14 Defendants. For example, Plaintiff Seitz was sometimes required to clock out to record that
15 he had received compliant meal periods on shifts when he had not, in fact, received these
16 timely meal periods. Moreover, as stated, Defendants' company-wide timekeeping system
17 prevented Plaintiffs and other non-party Aggrieved Employees from recording all hours
18 worked when their meal periods were shortened or interrupted, because the system locked out
19 Plaintiffs and other non-party Aggrieved Employees once they clocked out for a meal period,
20 and would not permit them to clock back in from a meal period before 30 minutes had
21 elapsed.

22 83. Also, Defendants did not provide Plaintiffs and other non-party Aggrieved
23 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
24 hours in one day. For example, Plaintiff Seitz would work shifts in excess of ten (10) hours
25 without receiving an uninterrupted second 30-minute meal period. Plaintiff Seitz and other
26 non-party Aggrieved Employees did not sign valid meal period waivers on days that they were
27 entitled to meal periods and were not relieved of all duties.

28 84. Moreover, Defendants had a company-wide policy of requiring all newly hired

1 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
2 the position that non-exempt, hourly paid employees had waived their rights to first meal
3 periods for the entirety of their employment and, on that basis, did not provide them with all
4 meal periods to which they were entitled. Moreover, Defendants' meal period waiver form
5 requires employees provide written notice should they wish to revoke the waiver.
6 Defendants' presumption that meal periods would not be provided for shifts in excess of five
7 (5) hours but less than six (6) hours due to blanket meal period waivers signed at or near the
8 time of hire, and imposition on employees to revoke the waivers in writing, discouraged and
9 impeded Plaintiffs and other non-party Aggrieved Employees from taking all meal periods to
10 which they were entitled.

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

15 [A]fter the meal break obligation is triggered . . . an employer is put to a
16 choice: it must (1) afford an off-duty meal period; (2) consent to a
17 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
18 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.

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

25 86. Defendants knew or should have known that as a result of their policies,
26 Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all duties to
27 take timely, uninterrupted meal periods. Defendants further knew or should have known that
28 they did not pay Plaintiffs and other non-party Aggrieved Employees meal period premiums

1 when they were missed, late, short, and/or interrupted.

2 87. Furthermore, Defendants engaged in a company-wide practice and/or policy of
3 not paying meal period premiums owed when compliant meal periods were not provided.
4 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
5 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
6 to the extent that Defendants did pay other non-party Aggrieved Employees meal period
7 premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-
8 party Aggrieved Employees at the correct rate of pay for premiums because Defendants
9 systematically failed to include all forms of compensation, such as incentive pay,
10 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
11 regular rate of pay.

12 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
13 Employees compliant meal periods and failed to pay the full meal period premiums due.
14 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
15 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
16 are therefore entitled to recover civil penalties pursuant to California Labor Code sections 558
17 and/or 2699(a), (f), and (g).

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

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

20 89. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
22 non-party Aggrieved Employees' employment by Defendants.

23 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

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

9 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
10 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
11 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
12 required rest period was not authorized and permitted.

13 93. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
15 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
16 Defendants’ policies and/or practices of understaffing and assigning heavy workloads
17 prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty
18 in order to take compliant rest periods. Defendants also failed to schedule rest periods, which,
19 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
20 Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to
21 take rest periods. Moreover, Defendants’ company-wide timekeeping system prevented
22 Plaintiff and other non-party Aggrieved Employees from recording when their rest periods
23 were shortened or interrupted, because the system locked out Plaintiffs and other non-party
24 Aggrieved Employees once they “clocked out” for a rest period, and would not permit them to
25 “clock back in” from a rest period before 10 minutes had elapsed.

26 94. Furthermore, upon information and belief, Defendants maintained and
27 implemented a company-wide practice and/or policy requiring that Plaintiffs and other non-
28 party Aggrieved Employees remain on the work premises during their rest periods. Because

1 Plaintiffs and other non-party Aggrieved Employees were restricted from leaving the work
2 premises during rest periods, they were denied the ability to use their rest periods freely for
3 their own purposes, such as going home or running personal errands. Thus, Defendants
4 effectively maintained control over Plaintiffs and other non-party Aggrieved Employees
5 during rest periods.

6 95. As a result of Defendants' practices and policies, Plaintiffs and other non-party
7 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
8 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
9 were entitled. For example, Plaintiff Seitz and Pepper worked through their shifts without
10 taking his 10-minute rest periods due to the workload, the lack of coverage, and failure to
11 schedule rest periods, or would have his rest periods interrupted to respond to phone calls
12 from management, handle problems with the cash register, or address equipment emergencies.

13 96. Defendants also have engaged in a company-wide practice and/or policy of not
14 paying all rest period premiums owed when compliant rest periods are not authorized or
15 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
16 Employees have not received premium pay for all missed rest periods. Alternatively, to the
17 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
18 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
19 Employees at the correct rate of pay for premiums because Defendants failed to include all
20 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
21 of remuneration, in the regular rate of pay.

22 97. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 558 and/or 2699(a), (f), and (g).

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

28 98. At all relevant times herein, California Labor Code section 226(a) provides that

1 every employer shall furnish each of his or her employees an accurate and complete itemized
2 wage statement in writing, including, but not limited to, the name and address of the legal
3 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
4 applicable rates of pay.

5 99. During the relevant time period, Defendants have knowingly and intentionally
6 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
7 inaccurate wage statements. For example, Defendants issued uniform wage statements to
8 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
9 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
10 the pay period, including rates of pay for overtime wages and/or meal and rest period
11 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
12 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

13 100. Because Defendants did not record the time Plaintiffs and other non-party
14 Aggrieved Employees spent working off-the-clock and deducted time from their records for
15 meal periods that were missed and/or interrupted (and therefore time for which they should
16 have been paid), Defendants did not list the correct amount of gross wages and net wages
17 earned by Plaintiffs and other non-party Aggrieved Employees, in compliance with section
18 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
19 number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation
20 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
21 pay period and the corresponding accurate number of hours worked at each hourly rate, in
22 violation of section 226(a)(9).

23 101. In addition, because Defendants did not calculate other non-party Aggrieved
24 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
25 and rest period premiums, Defendants did not list the correct amount of gross wages in
26 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
27 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
28 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and

1 rest period premiums, in violation of section 226(a)(9).

2 102. The wage statement deficiencies also include, without limitation, failing to list
3 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
4 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
5 for which aggrieved employees were paid; failing to list the name of the employee and only
6 the last four digits of his or her social security number or an employee identification number
7 other than a social security number; failing to list the name and address of the legal entity that
8 is the employer; and/or failing to state all hours worked as a result of not recording or stating
9 hours worked off-the-clock.

10 103. California Labor Code section 1174(d) provides that “[e]very person employing
11 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
12 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
13 plants or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
15 applicable piece rate paid to, employees employed at the respective plants or
16 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
17 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
18 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
19 as a result of failing to record the off-the-clock hours that they worked.

20 104. California Labor Code section 1198 provides that the maximum hours of work
21 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
22 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
23 employment of any employees for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
25 Wage Order, employers are required to keep accurate time records showing when the
26 employee begins and ends each work period and meal period. During the relevant time
27 period, Defendants engaged in company-wide practices and/or policies of failing to record
28 actual hours worked (including falsifying time records by recording that compliant meal

1 periods were taken regardless of if or when meal periods were actually taken), and thereby
2 failed to keep accurate records of work period and meal period start and end times for
3 Plaintiffs and other non-party Aggrieved Employees in violation of section 1198.
4 Furthermore, in light of Defendants' failure to provide Plaintiffs and other non-party
5 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
6 Defendants kept no records of meal start and end times for second meal periods.

7 105. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
8 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and
10 (g).

11 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

12 **VIOLATION OF LABOR CODE SECTION 204**

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

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

27 108. During the relevant time period, Defendants willfully failed to pay Plaintiffs
28 and other non-party Aggrieved Employees all wages due to them including, but not limited to,

1 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay,
2 within the time periods specified by California Labor Code section 204.

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

5 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

19 112. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
20 who are no longer employed by Defendants their wages earned and unpaid at the time of
21 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
22 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 256 and/or 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

26 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

27 113. At all relevant times herein, California Labor Code section 551 provides that
28 every person employed in any occupation of labor is entitled to one day's rest in seven.

1 Additionally, California Labor Code section 552 prohibits employers from requiring
2 employees to work more than six consecutive days without a day of rest.

3 114. At all relevant times herein set forth, California Labor Code section 556
4 exempts an employer from the day-of-rest requirement when the total hours worked by an
5 employee do not exceed 30 hours in any week or six hours in any one day thereof.

6 115. During the relevant time period, on information and belief, Defendants
7 scheduled Plaintiffs and other non-party Aggrieved Employees to work six (6) or more hours
8 per day and seven (7) consecutive days in a workweek. For example, on information and
9 belief, Plaintiff Seitz once worked approximately 13 consecutive days without being afforded
10 the opportunity to take one day's rest. Because Plaintiffs and other non-party Aggrieved
11 Employees worked over 30 hours per week and over six (6) hours in any one day in a
12 workweek, they were not exempt from the day-of-rest requirement. To the extent that
13 Plaintiffs and other non-party Aggrieved Employees may have signed purported waivers of
14 their right to a day's rest in seven, such waivers are invalid.

15 116. Thus, during the relevant time period, and in violation of California Labor
16 Code sections 551 and 552, Defendants caused Plaintiffs and other non-party Aggrieved
17 Employees to work more than six days in seven. Plaintiffs and other non-party Aggrieved
18 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
19 558 and/or 2699(a), (f), and (g).

20 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES**
21 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
22 **REGULATIONS, TITLE 8, SECTION 11050(13)(B)**

23 117. At all relevant times herein, California Labor Code section 1198 makes it
24 illegal to employ an employee under conditions of labor that are prohibited by the applicable
25 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
26 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
27 The employment of any employee . . . under conditions of labor prohibited by the order is
28 unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that

1 “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
2 shall be available to employees during work hours.”

3 118. Defendants’ California restaurants are generally similar in their layout and
4 design and there was, and continues to be, space that allows for a resting facility that
5 employees may use to cease work and recover during meal or rest periods. Defendants could
6 have provided Plaintiffs and other non-party Aggrieved Employees with a resting facility
7 within their restaurants, with reasonable or no modification, but instead denied, and continues
8 to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Plaintiffs and other
9 non-party Aggrieved Employees were forced to adjust to areas not conducive to resting, such
10 as facilities outside of the restaurant which are not designated or reserved for their rest, such
11 as in the restaurant’s dining area or in their personal vehicles.

12 119. Defendants did not provide Plaintiffs and other non-party Aggrieved
13 Employees with suitable resting facilities during their work hours, particularly during meal or
14 rest periods. In other words, during the times when Plaintiffs and other non-party Aggrieved
15 Employees were legally allowed to forgo assigned tasks, as in during a meal or rest period,
16 Defendants denied them any area within their restaurants to cease work and recover.
17 Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of
18 their rights to suitable resting facilities under California law.

19 120. As a result of Defendants’ company-wide policy and/or practice of denying
20 employees any area to rest within their restaurants and company-wide failure to provide
21 resting facilities in their restaurants, Plaintiffs and other non-party Aggrieved Employees were
22 forced to adjust to areas not conducive to resting or search for facilities outside their
23 restaurants to cease work and recover. Defendants’ failure to provide suitable resting facilities
24 to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code section
25 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

26 121. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).
28

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050 SUBDIVISION 14(B)

122. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

123. California Code of Regulations, Title 8, section 11050 subdivision 14(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

124. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

125. Plaintiffs alleges that Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiffs and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

126. Defendants did not provide Plaintiffs and other non-party Aggrieved

1 Employees with seats or stools in reasonable proximity to their work areas to allow them to
2 use seats when it would not interfere with the performance of their duties for times when they
3 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
4 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
5 required standing, Defendants denied them the use of seats nearby during lulls in their work
6 duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
7 Employees of their rights to a seat or stool under California law.

8 127. As a result of Defendants' company-wide policy and/or practice of prohibiting
9 employees from sitting at any time, even when they were not engaged in active duties
10 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
11 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
12 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
13 non-party Aggrieved Employees violated and continues to violate California Labor Code
14 section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

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

17 **FAILURE TO PAY REPORTING TIME PAY**

18 **VIOLATION OF LABOR CODE SECTION 1198**

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

24 130. California Code of Regulations, Title 8, section 11050(5)(A) provides that
25 “[e]ach workday an employee is required to report for work and does report, but is not put to
26 work or is furnished less than half said employee’s usual or scheduled day’s work, the
27 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
28 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which

1 shall not be less than the minimum wage.” The “primary purpose of the reporting time
2 regulation” is “to guarantee at least partial compensation for employees who report to work
3 expecting to work a specified number of hours, and who are deprived of that amount because
4 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
5 *Cellular*, 209 Cal. App. 4th 556 (2012).

6 131. Upon information and belief, Defendants violated California Labor Code
7 section 1198 and California Code of Regulations, Title 8, section 11050(5), because
8 Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they
9 reported to work for their scheduled shift but were put to work for less than half of the regular
10 schedule.

11 132. During the relevant period, Defendants had a company-wide practice of
12 sending other non-party Aggrieved Employees home early from their shifts, including before
13 they had worked at least half of their regular shift, but would not pay other non-party
14 Aggrieved Employees for half of their scheduled shift. Although other non-party Aggrieved
15 Employees would report to work based on the schedule that Defendants provided to them,
16 Defendants would send them home before they had worked at least half of their scheduled
17 shifts without giving them reporting time pay.

18 133. Accordingly, other non-party Aggrieved Employees were not properly
19 compensated with reporting time pay in violation of California Labor Code section 1198 and
20 California Code of Regulations, Title 8, section 11050(5). Other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 2699(a), (f), and (g).

23 **FAILURE TO PAY SPLIT-SHIFT PAY**

24 **VIOLATION OF LABOR CODE SECTION 1198**

25 134. California Labor Code section 1198 provides that no employer may employ an
26 employee under conditions of labor that are prohibited by the applicable IWC wage order.
27 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
28 fixed by the commission shall be the . . . standard conditions of labor for employees. The

1 employment of any employee . . . under conditions of labor prohibited by the order is
2 unlawful.”

3 135. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
4 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
5 in addition to the minimum wage for that workday, except when the employee resides at the
6 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a
7 work schedule, which is interrupted by non-paid non-working periods established by the
8 employer, other than bona fide rest or meal periods.”

9 136. Defendants willfully violated California Labor Code section 1198 and
10 California Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to
11 pay Plaintiffs and other non-party Aggrieved Employees a split-shift premium when they
12 returned to work for an additional shift in the same day, after having been clocked out for
13 more than an hour. Accordingly, Defendants required Plaintiffs and other non-party
14 Aggrieved Employees to work split shifts but failed to pay them an additional hour at
15 minimum wage, in violation of California Labor Code section 1198.

16 137. Defendants’ failure to provide Plaintiffs and other non-party Aggrieved
17 Employees with split-shift pay when they returned to work for an additional shift in the same
18 day, after having been clocked out for more than an hour, violates California Labor Code
19 section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and
20 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
21 to Labor Code sections 2699(a), (f), and (g).

22 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

23 **VIOLATION OF LABOR CODE SECTION 2802**

24 138. At all times herein set forth, California Labor Code section 2802 provides that
25 an employer must reimburse employees for all necessary expenditures and losses incurred by
26 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
27 to prevent employers from passing off their cost of doing business and operating expenses on
28 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 the employer requires the use of tools or equipment or they 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 may provide and maintain hand tools and equipment customarily required by the particular trade or craft.”

139. First, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff Seitz periodically was required to drive to Defendants’ other restaurant locations in Willows, Chico, and Marysville, California, or to a grocery store to obtain ingredients or restaurant supplies, such as tomatoes, bags, and burger patties. Defendants also required Plaintiff Seitz to drive to nearby banks to make bank deposits for the restaurant. Plaintiff Seitz estimates he drove approximately 250 miles per month in order to fulfill his work-related duties. Likewise, Defendant required Plaintiff Pepper to drive her personal vehicle to get supplies such as ice, burger buns, and French fries from another neighboring Burger King restaurant of Defendant’s. Although Defendants required Plaintiffs Seitz and Pepper and the other non-party Aggrieved Employees to utilize their own vehicles to carry out their work-related responsibilities, Defendants did not reimburse them for their travel expenses.

140. Second, during the relevant time period, Defendants, on a company-wide basis, required Plaintiffs and other non-party Aggrieved Employees to use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Specifically, Plaintiff Seitz and Pepper were required to use their personal cellular phone to respond to calls and text messages from supervisors or managers regarding work-related tasks, such as bank drops, to send photographs, and to utilize their GPS navigation when running errands. Although Defendants required Plaintiffs and other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out their work-related

responsibilities, Defendants failed to reimburse them for these costs.

141. Third, during the relevant time period, Defendants, on a company-wide basis, forced Plaintiffs and other non-party Aggrieved Employees to purchase tools, supplies and/or other equipment necessary for the completion of their work-related duties. For example, Plaintiff Seitz spent more than \$60.00 purchasing supplies and ingredients, such as condiments, for the restaurant. As a further example, due to COVID-19, Plaintiff Seitz and Pepper were required to spend approximately \$10.00 and \$20, respectively, on face masks to wear at work because Defendants required face masks to be worn in their restaurants, but failed to provide a sufficient number for all employees to wear. Although Defendants required Plaintiffs and other non-party Aggrieved Employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, Defendants did not reimburse them for these expenses.

142. Fourth, during the relevant time period, Defendants expected Plaintiffs and other non-party Aggrieved Employees to report to work in clean and presentable uniforms bearing the Burger King logo, including uniform shirts. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiffs and other non-party Aggrieved Employees with one or two sets of uniforms during their employment. Because Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiffs and other non-party 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, Plaintiff's uniforms would become stained with grease or cleaning chemicals, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, he had to wash his uniform items separately from their other clothing items and incur additional laundry expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiffs and other non-party Aggrieved Employees to wear during their shifts and forced them to incur

1 the cost of maintaining employee uniforms.

2 143. Defendants could have provided Plaintiffs and other non-party Aggrieved
3 Employees with the actual equipment for use on the job, such as company vehicles, company
4 mobile devices, supplies and tools, face masks, and an adequate number of uniforms or access
5 to laundering services, or, Defendants could have reimbursed employees for their mileage;
6 travel expenses; mobile device usage; tool, supply, and/or equipment expenses; and the costs
7 of their laundering expenses or provided a uniform maintenance allowance. Instead,
8 Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved
9 Employees. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum
10 wage.

11 144. Defendants' company-wide policy and/or practice of passing on their operating
12 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
13 section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
14 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

17 **VIOLATION OF LABOR CODE SECTION 2810.5**

18 145. California's Wage Theft Prevention Act was enacted to ensure that employers
19 provide employees with basic information material to their employment relationship at the
20 time of hiring, and to ensure that employees are given written and timely notice of any
21 changes to basic information material to their employment. Codified at California Labor
22 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
23 employer must provide written notice to employees containing basic and material payroll
24 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
25 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
26 overtime, the regular payday designated by the employer, and any allowances claims as part
27 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
28 (C).

1 146. During the relevant time period, Defendants failed to provide Plaintiffs and
2 other non-party Aggrieved Employees with written notice that lists all the requisite
3 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

4 147. Defendants' failure to provide Plaintiffs and other non-party Aggrieved
5 Employees with written notice of basic information regarding their employment with
6 Defendants is in violation of Labor Code section 2810.5. Plaintiffs and other non-party
7 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
8 section 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

10 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

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

17 149. During the relevant period, as stated above, Defendants failed to provide
18 Plaintiffs and other non-party Aggrieved Employees with personal protective equipment, such
19 as face masks to keep them safe in the workplace. Despite the fact that Defendants required
20 Plaintiffs and other non-party Aggrieved Employees to wear certain personal protective
21 equipment, including face masks, while engaged in their work-related duties, Defendants
22 failed to provide such reasonably necessary equipment to Plaintiffs and other non-party
23 Aggrieved Employees to keep them safe.

24 150. Thus, Defendants' failure to provide Plaintiffs and other non-party Aggrieved
25 Employees with safety devices and safeguards violates California Labor Code sections 6401
26 and 6403. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).
28

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on behalf of all other non-party Aggrieved Employees, prays 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 reserves the right to amend this 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); 201 and 202 (by failing to timely pay all
17 earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the
19 applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the
20 applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable
21 IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable IWC
22 Wage Order (by failing to provide split-shift pay); 2802 (by failing to reimburse business
23 expenses); 2810.5 (by failing to provide written notice of information material to
24 employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

25 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
26 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
27 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
28 2810.5, 6401, and 6403;

1 4. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
4 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

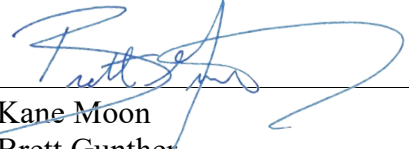
5 5. For pre-judgment and post-judgment interest as provided by law; and

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

8
9 Dated: January 23, 2023

Respectfully submitted,

10
11 MOON & YANG, APC

12
13 By: 

14 Kane Moon

Brett Gunther

15 Attorneys for Plaintiff Makaili S. Pepper
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **January 23, 2023** at Los Angeles, California.

Karen Castillo

Type or Print Name



Signature