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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**

**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, as an aggrieved employee and on behalf of the State of
2 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 Plaintiff, 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”). Plaintiff’s 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 Plaintiff’s 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. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
21 employment. On further information and belief, Defendants’ arbitration agreement was and is
22 both procedurally and substantively unconscionable. Specifically, Defendants presented
23 employees with an “Arbitration Agreement” which had to be reviewed and signed
24 immediately. The Arbitration Agreement was one of several documents presented to new
25 employees for signature during the orientation process, including the California Meal Period
26 and Rest Break Policy Acknowledgement, California Meal Period Waiver, and Day 1
27 Orientation: New Employee Tasks, among other documents. Also, employees did not have a
28 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was

1 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
2 all of the other on-boarding documents. Furthermore, Defendants did not set forth in the
3 agreement or otherwise provide employees with the rules which will govern the arbitration,
4 instead forcing employees to seek this information out on their own.

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

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

12 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of NOR CAL FAST FOODS , INC. at all
14 relevant times.

15 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, NOR CAL FAST
17 FOODS , INC. and/or DOES 1 through 10 (collectively, "Defendants" or "NORCAL"), each
18 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
19 each of the other co-Defendants and was acting within the course and scope of such agency,
20 employment, joint venture, or concerted activity with legal authority to act on the others'
21 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
22 policy of Defendants.

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

27 13. Plaintiff is informed and believes, and thereon alleges, that each of said
28 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

omissions, occurrences, and transactions alleged herein.

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

18. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
4 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
5 were not recorded.

6 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive certain wages for overtime compensation and that they were not receiving certain
9 wages for overtime compensation.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that other non-party Aggrieved Employees were entitled to be paid at a
12 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
13 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
14 compensation, but failed to incorporate all forms of remuneration in calculating the regular
15 rate of pay for other non-party Aggrieved Employees.

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

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

uninterrupted, thirty (30) minute meal period.

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

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

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

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within permissible time periods.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the

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

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 one day's rest in seven. In violation of the California Labor Code, Defendants required
7 Plaintiff and other non-party Aggrieved Employees to work more than six consecutive days
8 without a day of rest, where the total hours worked exceeded 30 hours in any week or six
9 hours in any one day thereof.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 suitable resting facilities to cease work and recover during meal or rest periods, but failed to
13 provide suitable resting facilities.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 suitable seating and/or were entitled to sit when it did not interfere with the performance of
17 their duties and have seats nearby to use during a lull in tasks that do require moving about or
18 standing. In violation of the California Labor Code and applicable IWC Wage Order,
19 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees suitable
20 seating.

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that other non-party Aggrieved Employees were entitled to be paid
23 reporting time pay when they reported to work for their scheduled shift but were put to work
24 for less than half of the regular schedule. In violation of the California Labor Code,
25 Defendants did not pay other non-party Aggrieved Employees all reporting time pay due.

26 33. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 be paid split shift premiums when they returned to work for an additional shift in the same

1 day, after having been clocked out for more than an hour. In violation of the California Labor
2 Code, Defendants did not pay Plaintiff and other non-party Aggrieved Employees all split
3 shift premiums due.

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

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

14 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
16 and other non-party Aggrieved Employees with safety devices and safeguards to protect their
17 life, safety, and health in the workplace, but failed to do so.

18 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew or should have known that they had a duty to compensate
20 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
21 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
22 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
23 that they were properly denied wages, all in order to increase Defendants' profits.

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

1 to procedures outlined in California Labor Code section 2699.3.

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

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

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

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

28 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,

1 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
2 provision other than those listed in Section 2699.5 after the following requirements have been
3 met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing to the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated (other than those listed in Section 2699.5), including the facts
8 and theories to support the alleged violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice. The employer shall
14 give written notice by certified mail within that period of time to the
15 aggrieved employee or representative and the agency if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the employee may commence a
19 civil action pursuant to Section 2699.

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

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

4 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

8 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
17 as a private attorney general, seeks assessment and collection of civil penalties under Labor
18 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
19 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 551,
20 552, and 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as
21 a private attorney general, does not seek the recovery of unpaid wages under Labor Code
22 section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552,
23 and 1198, and the applicable IWC Wage Order.

24 47. Defendants, at all times relevant to this complaint, were employers or persons
25 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
26 Employees' rights by violating various sections of the California Labor Code as set forth
27 above.

28 48. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
5 private attorney general, seeks assessment and collection of civil penalties for himself, all
6 other non-party Aggrieved Employees, and the State of California against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
8 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403.

9 **FIRST CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 51. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
16 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
17 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
18 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
19 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12,
20 2810.5, 6401, and 6403.

21 52. Defendants’ conduct, as alleged herein, violates numerous sections of the
22 California Labor Code, including, but not limited to, the following:

- 23 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
24 Wage Order for Defendants’ failure to compensate Plaintiff and other
25 non-party Aggrieved Employees with all required overtime pay and
26 failure to properly calculate the overtime rates paid to other non-party
27 Aggrieved Employees, as set forth below;
- 28 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and

1 the applicable IWC Wage Order for Defendants' failure to compensate
2 Plaintiff and other non-party Aggrieved Employees with at least
3 minimum wages for all hours worked, as set forth below;

4 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
6 and other non-party Aggrieved Employees with meal periods, as set
7 forth below;

8 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to authorize and
10 permit Plaintiff and other non-party Aggrieved Employees to take rest
11 periods, as set forth below;

12 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
13 IWC Wage Order for failure to provide accurate and complete wage
14 statements to Plaintiff and other non-party Aggrieved Employees, as set
15 forth below;

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

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

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

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

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

- 1 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
2 Order for failing to provide suitable seating to Plaintiff and other
3 non-party Aggrieved Employees, as set forth below;
- 4 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
5 Order for failure to pay reporting time pay when other non-party
6 Aggrieved Employees were put to work for less than half of their
7 regular scheduled shifts, as set forth below;
- 8 (m) Violation of Labor Code section 1198 and the applicable IWC Wage
9 Order for failure to pay split-shift premiums when Plaintiff and other
10 non-party Aggrieved Employees returned to work for an additional shift
11 in the same day, after having been clocked out for more than an hour, as
12 set forth below;
- 13 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
14 and other non-party Aggrieved Employees for all business expenses
15 necessarily incurred, as set forth below;
- 16 (o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
17 provide written notice of information material to Plaintiff's and other
18 non-party Aggrieved Employees' employment with Defendants, as set
19 forth below; and
- 20 (p) Violation of Labor Code sections 6401 and 6403 for failure to provide
21 Plaintiff and other non-party Aggrieved Employees with safety devices
22 and safeguards for the workplace, as set forth below.

23 **FAILURE TO PAY OVERTIME**

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

25 53. Labor Code section 1198 makes it illegal to employ an employee under
26 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
27 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
28 shall be the . . . standard conditions of labor for employees. The employment of any employee

1 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

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

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

27 59. First, during the relevant time period, Defendants had a company-wide policy
28 and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved

1 Employees from recording hours worked that were outside of their scheduled shifts, in order
2 to limit the amount of overtime employees could accrue. On information and belief, this
3 limitation on overtime accrual was based on a company-wide policy of staffing restaurant
4 locations strictly based on the labor hours or labor budget set by corporate. Defendants'
5 management informed Plaintiff that the labor budget was to be 12% of the location's total
6 sales. This policy of limiting overtime, coupled with Defendants' understaffing policy and
7 assignment of heavy workloads, led Plaintiff and other non-party Aggrieved Employees to
8 work off-the-clock before and after their scheduled shift times in order to complete their
9 assigned tasks.

10 60. For example, Defendants' management would require Plaintiff to run errands or
11 assist other employees at work before he was permitted to clock in at his scheduled shift start-
12 time. Defendants' supervisors would frequently ask Plaintiff to drive and pick up ingredients
13 or supplies (such as tomatoes, bags, and burger patties) from Defendants' other restaurant
14 locations in Chico, Willows, and Marysville, California, or purchase supplies from a grocery
15 store on his way to work and off-the-clock, which could take 10-90 minutes each time, work
16 for which he was not paid. Similarly, Defendants' supervisors instructed Plaintiff to clock out
17 and continue working—performing inventory, cleaning the premises, checking on and
18 preparing ingredients for the following day, completing paperwork, and making bank
19 deposits, but Defendants did not compensate him for this time. Other non-party Aggrieved
20 Employees were also required to work while off-the-clock, providing customer service,
21 communicating with other employees, and logging into and out of computer and phone
22 systems.

23 61. Moreover, Plaintiff and other non-party Aggrieved Employees were required to
24 respond to their personal mobile devices and complete other work-related tasks on their days
25 off. For example, while off-the-clock, Plaintiff was required to respond to phone calls and
26 text messages regarding errands that Defendants' management assigned to him, such as bank
27 drops and obtaining supplies and ingredients from other locations. Defendants' management
28 would also contact other non-party Aggrieved Employees on their days off and instruct them

1 to drive over to their restaurants to power wash sidewalks, on threat of discipline. Defendants
2 also required Plaintiff and other non-party Aggrieved Employees to complete online training
3 modules, such as food safety training, while off-the-clock, but failed to compensate Plaintiff
4 and other non-party Aggrieved Employees for this time spent doing so. For example, Plaintiff
5 was required to take an online training course while he was clocked out, which took
6 approximately 1.5 hours to complete, time for which he was not paid. Thus, Defendants failed
7 to track this time spent working before and after scheduled shifts, and Plaintiff and other non-
8 party Aggrieved Employees received no compensation for this time.

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

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

1 schedule meal periods, which further caused Plaintiff and other non-party Aggrieved
2 Employees to not be relieved of their duties for compliant meal periods. Consequently,
3 Plaintiff and other non-party Aggrieved Employees were required to work through and/or had
4 their unpaid meal periods interrupted in order to complete their assigned duties and handle
5 customer demand, time for which they were not paid.

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

21 65. Fourth, on information and belief, because Defendants frowned upon
22 employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party
23 Aggrieved Employees to clock out for meal periods, on threat of discipline, and/or adjusted
24 their time records to reflect compliant meal periods, even when they did not receive a
25 compliant meal period, in order to strictly limit meal penalties that Defendants would
26 otherwise owe. Thus, Plaintiff and other non-party Aggrieved Employees performed work
27 during meal periods for which they were not paid. Furthermore, on information and belief,
28 Defendants' company-wide timekeeping system prevented Plaintiff and other non-party

1 Aggrieved Employees from recording all hours worked when their meal periods were
2 shortened or interrupted, because the system locked out Plaintiff and other non-party
3 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
4 clock back in from a meal period before 30 minutes had elapsed. Thus, Defendants did not
5 record all hours worked during meal periods, and Plaintiff and other non-party Aggrieved
6 Employees performed work during meal periods for which they were not paid.

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

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

24 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
25 the balance of overtime compensation as required by California law, violates the provisions of
26 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY MINIMUM WAGES**

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

3 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

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

21 71. Additionally, as stated above, due to Defendants’ uniform practices of utilizing
22 labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods,
23 subsequent lack of meal period coverage, and/or policy requiring managerial employees to
24 stay on or near the premises during meal periods, Plaintiff and other non-party Aggrieved
25 Employees were impeded from taking all uninterrupted meal periods to which they were
26 entitled and were required to work during their meal periods, time for which they were not
27 paid. Moreover, as stated above, on information and belief, in order to limit meal penalties
28 that Defendants would otherwise owe, Defendants pressured Plaintiff and other non-party

1 Aggrieved Employees to clock out for meal periods, on threat of discipline, and/or adjusted
2 employee time records to reflect compliant meal periods. Furthermore, as set forth above, on
3 information and belief, Defendants systematically failed to pay Plaintiff and other non-party
4 Aggrieved Employees for actual hours worked during unpaid meal periods, because
5 Defendants' timekeeping system locked out Plaintiff and other non-party Aggrieved
6 Employees for 30 minutes when they clocked out for a meal period.

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

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

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

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

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

28 76. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 77. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
4 1198, and the applicable IWC Wage Order also require employers to provide a second meal
5 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
6 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
7 the total hours worked is no more than twelve (12) hours, the second meal period may be
8 waived by mutual consent of the employer and the employee only if the first meal period was
9 not waived.

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

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

1 party Aggrieved Employees had to work through all or part of their meal periods, had their
2 meal periods interrupted, and/or had to wait extended periods of time before taking meal
3 periods. Plaintiff was often required to take his meal periods late after having worked in
4 excess of five (5) hours or more into his shift in order to meet the restaurant's customer
5 demand, such as the dinner rush hour. For example, Plaintiff's timepunches indicate he took
6 his meal period late on December 11, 2020, after more than 5 hours and 46 minutes of work.
7 Moreover, Plaintiff's meal periods were interrupted several times per week by Defendants'
8 managers calling his personal cellular phone to discuss work-related matters or were cut short
9 by 20 minutes in order to return to work assisting his coworkers or customers.

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

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

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

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

16 [A]fter the meal break obligation is triggered . . . an employer is put to a
17 choice: it must (1) afford an off-duty meal period; (2) consent to a
18 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
19 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.

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

26 84. Defendants knew or should have known that as a result of their policies,
27 Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to
28 take timely, uninterrupted meal periods. Defendants further knew or should have known that

1 they did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums
2 when they were missed, late, short, and/or interrupted.

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

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

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

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

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

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

1 (3 ½) hours.

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

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

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

27 92. Furthermore, upon information and belief, Defendants maintained and
28 implemented a company-wide practice and/or policy requiring that Plaintiff and other non-

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

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

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

23 95. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
26 558 and/or 2699(a), (f), and (g).

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

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

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

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

99. In addition, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in

1 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
2 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
3 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
4 rest period premiums, in violation of section 226(a)(9).

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

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

23 102. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants engaged in company-wide practices and/or policies of failing to record
3 actual hours worked (including falsifying time records by recording that compliant meal
4 periods were taken regardless of if or when meal periods were actually taken), and thereby
5 failed to keep accurate records of work period and meal period start and end times for Plaintiff
6 and other non-party Aggrieved Employees in violation of section 1198. Furthermore, in light
7 of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with
8 second 30-minute meal periods to which they were entitled, Defendants kept no records of
9 meal start and end times for second meal periods.

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

13 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

14 **VIOLATION OF LABOR CODE SECTION 204**

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

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

1 106. During the relevant time period, Defendants willfully failed to pay Plaintiff and
2 other non-party Aggrieved Employees all wages due to them including, but not limited to,
3 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay,
4 within the time periods specified by California Labor Code section 204.

5 107. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

7 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

21 110. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
22 who are no longer employed by Defendants their wages earned and unpaid at the time of
23 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
24 California Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
26 256 and/or 2699(a), (f), and (g).

27 //

28 //

1 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**
2 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

3 111. At all relevant times herein, California Labor Code section 551 provides that
4 every person employed in any occupation of labor is entitled to one day’s rest in seven.
5 Additionally, California Labor Code section 552 prohibits employers from requiring
6 employees to work more than six consecutive days without a day of rest.

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

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

19 114. Thus, during the relevant time period, and in violation of California Labor
20 Code sections 551 and 552, Defendants caused Plaintiff and other non-party Aggrieved
21 Employees to work more than six days in seven. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

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

27 115. At all relevant times herein, California Labor Code section 1198 makes it
28 illegal to employ an employee under conditions of labor that are prohibited by the applicable

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

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

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

23 118. As a result of Defendants’ company-wide policy and/or practice of denying
24 employees any area to rest within their restaurants and company-wide failure to provide
25 resting facilities in their restaurants, Plaintiff and other non-party Aggrieved Employees were
26 forced to adjust to areas not conducive to resting or search for facilities outside their
27 restaurants to cease work and recover. Defendants’ failure to provide suitable resting facilities
28 to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section

1 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

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

4 **FAILURE TO PROVIDE SUITABLE SEATING**

5 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
6 **REGULATIONS, TITLE 8, SECTION 11050 SUBDIVISION 14(B)**

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

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

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

23 123. Plaintiff alleges that Defendants’ California restaurants are generally similar in
24 their layout and design and there was, and continues to be, space near their work areas (with
25 reasonable or no modification to these work areas) to allow for the presence and use of a seat
26 or stool by Plaintiff and other non-party Aggrieved Employees during lulls in operation.
27 Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a
28 seat or stool in their work areas, but instead denied Plaintiff and other non-party Aggrieved

1 Employees suitable seating altogether and effectively forced Plaintiff and other non-party
2 Aggrieved Employees to stand throughout the day.

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

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

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

20 **FAILURE TO PAY REPORTING TIME PAY**

21 **VIOLATION OF LABOR CODE SECTION 1198**

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

27 128. California Code of Regulations, Title 8, section 11050(5)(A) provides that
28 “[e]ach workday an employee is required to report for work and does report, but is not put to

1 work or is furnished less than half said employee's usual or scheduled day's work, the
2 employee shall be paid for half the usual or scheduled day's work, but in no event for less
3 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
4 shall not be less than the minimum wage." The "primary purpose of the reporting time
5 regulation" is "to guarantee at least partial compensation for employees who report to work
6 expecting to work a specified number of hours, and who are deprived of that amount because
7 of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch*
8 *Cellular*, 209 Cal. App. 4th 556 (2012).

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

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

21 131. Accordingly, other non-party Aggrieved Employees were not properly
22 compensated with reporting time pay in violation of California Labor Code section 1198 and
23 California Code of Regulations, Title 8, section 11050(5). Other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 2699(a), (f), and (g).

26 **FAILURE TO PAY SPLIT-SHIFT PAY**

27 **VIOLATION OF LABOR CODE SECTION 1198**

28 132. California Labor Code section 1198 provides that no employer may employ an

1 employee under conditions of labor that are prohibited by the applicable IWC wage order.
2 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
3 fixed by the commission shall be the . . . standard conditions of labor for employees. The
4 employment of any employee . . . under conditions of labor prohibited by the order is
5 unlawful.”

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

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

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

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **VIOLATION OF LABOR CODE SECTION 2802**

27 136. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

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

9 137. First, during the relevant time period, Defendants had a company-wide policy
10 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
11 vehicles to carry out company business, but failed to reimburse them for all costs of travel,
12 including mileage. For example, Plaintiff periodically was required to drive to Defendants'
13 other restaurant locations in Willows, Chico, and Marysville, California, or to a grocery store
14 to obtain ingredients or restaurant supplies, such as tomatoes, bags, and burger patties.
15 Defendants also required Plaintiff to drive to nearby banks to make bank deposits for the
16 restaurant. Plaintiff estimates he drove approximately 250 miles per month in order to fulfill
17 his work-related duties. Although Defendants required Plaintiff and other non-party
18 Aggrieved Employees to utilize their own vehicles to carry out their work-related
19 responsibilities, Defendants did not reimburse them for their travel expenses.

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

responsibilities, Defendants failed to reimburse them for these costs.

139. Third, during the relevant time period, Defendants, on a company-wide basis, forced Plaintiff 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 spent more than \$60.00 purchasing supplies and ingredients, such as condiments, for the restaurant. As a further example, due to COVID-19, Plaintiff was required to spend approximately \$10.00 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 Plaintiff 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.

140. Fourth, during the relevant time period, Defendants expected Plaintiff 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 Plaintiff 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, Plaintiff 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 Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

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

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

VIOLATION OF LABOR CODE SECTION 2810.5

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

144. During the relevant time period, Defendants failed to provide Plaintiff and

1 other non-party Aggrieved Employees with written notice that lists all the requisite
2 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

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

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

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

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

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

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

27 **REQUEST FOR JURY TRIAL**

28 Plaintiff requests a trial by jury.

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
3 judgment against Defendants, jointly and severally, as follows:

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

7 2. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
9 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
10 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
11 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
12 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
14 earned wages upon termination); 204 (by failing to timely pay all earned wages during
15 employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the
16 applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the
17 applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable
18 IWC Wage Order (by failing to provide reporting time pay); 1198 and the applicable IWC
19 Wage Order (by failing to provide split-shift pay); 2802 (by failing to reimburse business
20 expenses); 2810.5 (by failing to provide written notice of information material to
21 employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
23 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
24 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
25 2810.5, 6401, and 6403;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),

1 1182.12, 1194, 1197, 1198, 2802, 2810.5, 6401, and 6403;

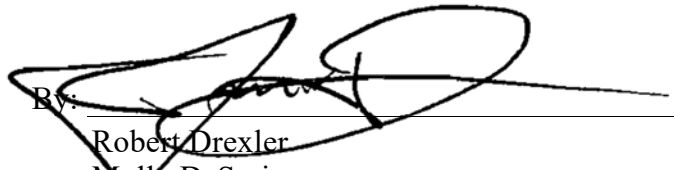
2 5. For pre-judgment and post-judgment interest as provided by law; and

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

5
6 Dated: February 14, 2022

Respectfully submitted,

7 Capstone Law APC

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10 By: Robert Drexler
11 Molly DeSario
Jonathan Lee

12 Attorneys for Plaintiff George Seitz
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Exhibit 1



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MAO SHIOKURA
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December 9, 2021

VIA ONLINE SUBMISSION

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

Subject: *George Seitz v. Nor Cal Fast Foods , Inc.*

Dear PAGA Administrator:

This office represents George Seitz in connection with his claims under the California Labor Code. Mr. Seitz was an employee of NOR CAL FAST FOODS , INC. ("NORCAL").

The employer may be contacted directly at the address below:

NOR CAL FAST FOODS , INC.
7011 KOLL CENTER PKWY, #150
PLEASANTON CA 94566

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

NORCAL employed Mr. Seitz as a non-exempt, hourly paid Shift Lead and Crew Member from approximately December 2019 to December 2020. Mr. Seitz worked for NORCAL at its Burger King restaurant located at 855 Oro Dam Blvd. East, in Oroville, California (store #4091). He typically worked eight (8) hours or more per day, four (4) to seven (7) days per week, and approximately 40 hours or more per week. At the time his employment ended, Mr. Seitz was compensated approximately \$13.00 per hour. His job duties included, without limitation, performing inventory, making bank deposits, preparing food, taking orders, and cleaning and maintaining the premises.

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

¹ These facts, theories, and claims are based on Mr. Seitz's experience and counsel's review of those records currently available relating to Mr. Seitz's employment. Discovery conducted in litigation of wage and hour

NORCAL's Company-Wide and Uniform Payroll and HR Practices

NOR CAL FAST FOODS , INC. is a California corporation. Upon information and belief, NORCAL operates numerous Burger King-branded franchise restaurant locations in California. Upon information and belief, NORCAL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pleasanton, California, for all non-exempt, hourly paid employees working for NORCAL in California, including Mr. Seitz and other aggrieved employees. At all relevant times, NORCAL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Seitz and other aggrieved employees, regardless of their location or position.

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

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

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

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

First, during the relevant time period, NORCAL had a company-wide policy and/or practice of discouraging and impeding Mr. Seitz and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. NORCAL's management informed Mr. Seitz that the labor budget was to be 12% of the location's total sales. This policy of limiting overtime, coupled with NORCAL's understaffing policy and assignment of heavy workloads, led Mr. Seitz and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks.

claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Seitz reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

For example, NORCAL's management would require Mr. Seitz to run errands or assist other employees at work before he was permitted to clock in at his scheduled shift start-time. NORCAL's supervisors would frequently ask Mr. Seitz to drive and pick up ingredients or supplies (such as tomatoes, bags, and burger patties) from NORCAL's other restaurant locations in Chico, Willows, and Marysville, California, or purchase supplies from a grocery store on his way to work and off-the-clock, which could take 10-90 minutes each time, work for which he was not paid. Similarly, NORCAL's supervisors instructed Mr. Seitz to clock out and continue working, performing inventory, cleaning the premises, checking on and preparing ingredients for the following day, completing paperwork, and making bank deposits, but NORCAL did not compensate him for this time. Other aggrieved employees were also required to work while off-the-clock, providing customer service, communicating with other employees, and logging into and out of computer and phone systems. Moreover, Mr. Seitz and other aggrieved employees were required to respond to their personal mobile devices and complete other work-related tasks on their days off. For example, while off-the-clock, Mr. Seitz was required to respond to phone calls and text messages regarding errands that NORCAL's management assigned to him, such as bank drops and obtaining supplies and ingredients from other locations. Other aggrieved employees were contacted by NORCAL's management on their days off and instructed to drive over to their restaurants to power wash sidewalks, on threat of discipline. NORCAL also required Mr. Seitz and other aggrieved employees to complete online training modules, such as food safety training, while off-the-clock, but failed to compensate Mr. Seitz and other aggrieved employees for this time spent doing so. For example, Mr. Seitz was required to take an online training course while he was clocked out, which took approximately 1.5 hours to complete, time for which he was not paid. Thus, NORCAL failed to track this time spent working before and after scheduled shifts, and Mr. Seitz and other aggrieved employees received no compensation for this time.

Second, during the relevant period, NORCAL implemented, on a company-wide basis, an employer-imposed requirement that Mr. Seitz and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, Mr. Seitz and other aggrieved employees were required to spend time waiting and/or undergoing the temperature check, before being permitted to clock in for their shift. Even though NORCAL required these temperature checks and/or health screenings, NORCAL did not provide Mr. Seitz and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, as stated, NORCAL had, and continues to have, a uniform practice and/or policy of understaffing its restaurant locations, pursuant to its labor budget, which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Because NORCAL did not employ or staff an adequate number of employees to meet their productivity expectations, there was no one available to relieve employees needing meal period coverage, and Mr. Seitz and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Seitz missed his meal periods twice per week and had them interrupted almost daily due to understaffing, the heavy workload, and subsequent lack of coverage. NORCAL also had a practice of failing to schedule meal periods, which further caused Mr. Seitz and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Seitz and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

In conjunction with understaffing its restaurants, on information and belief, NORCAL had a requirement that a managerial employee, such as a shift lead, be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets NORCAL implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Mr. Seitz and other aggrieved employees were sometimes the only managers on duty, and were expected to

supervise the restaurant and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving NORCAL's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Mr. Seitz and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, Mr. Seitz missed his meal periods or had his meal periods interrupted in order to address customer demand.

Fourth, on information and belief, because NORCAL frowned upon employees accruing meal period penalties, NORCAL pressured Mr. Seitz and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that NORCAL would otherwise owe. Thus, Mr. Seitz and other aggrieved employees performed work during meal periods for which they were not paid. Furthermore, on information and belief, NORCAL's company-wide timekeeping system prevented Mr. Seitz and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Seitz and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, NORCAL did not record all hours worked during meal periods and Mr. Seitz and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

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

As stated above, NORCAL systematically failed to pay Mr. Seitz and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. Because NORCAL discouraged and impeded Mr. Seitz and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Seitz and other aggrieved employees were required to work off-the-clock before and after their scheduled shift start times to complete their assigned duties, including, but not limited to, running errands, making bank deposits, performing inventory, responding to phone calls and text messages, and completing mandatory online training modules. Moreover, as set forth above, Mr. Seitz and other aggrieved employees were required to undergo COVID-19 health screenings prior to clocking in for the start of their scheduled shifts, but were not compensated for this time.

Additionally, as set forth above, due to NORCAL's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, subsequent lack of meal period coverage, and/or policy requiring managerial employees to stay on or near the premises during meal periods, Mr. Seitz and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Moreover, as stated above, on information and belief, in order to limit meal penalties that NORCAL would otherwise owe, NORCAL pressured Mr. Seitz and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods. Furthermore, as set forth above, on information and belief, NORCAL systematically failed to pay Mr. Seitz and other aggrieved employees for actual hours worked during unpaid meal periods, because NORCAL's timekeeping system locked out Mr. Seitz and other aggrieved employees for 30 minutes when they clocked out for a meal period.

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

Accordingly, NORCAL regularly failed to pay at least minimum wages to Mr. Seitz and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Seitz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

Second, as stated, NORCAL had, and continues to have, company-wide policies and/or practices of understaffing locations due to labor budgeting, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Seitz and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, as stated above, on information and belief, NORCAL had a requirement that a managerial employee be present on the restaurant floor at all times, but NORCAL's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Mr. Seitz and other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers. Thus, Mr. Seitz and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. Mr. Seitz was often required to take his meal periods late after having worked in excess of five (5) hours or more into his shift in order to meet the restaurant's customer demand, such as the dinner rush hour. For example, Mr. Seitz's timepunches indicate he took his meal period late on December 11, 2020, after more than 5 hours and 46 minutes of work. *See example timepunch below.*

12/11/20 05:21 am	12/11/20 09:01 am	3.67h	04091 Oroville	Shift Leader
12/11/20 09:11 am	12/11/20 11:07 am	1.93h	04091 Oroville	Shift Leader
12/11/20 11:39 am	12/11/20 12:24 pm	0.75h	04091 Oroville	Shift Leader
12/11/20 12:35 pm	12/11/20 01:51 pm	1.27h	04091 Oroville	Shift Leader

Moreover, Mr. Seitz's meal periods were interrupted several times per week by NORCAL's managers calling his personal cellular phone to discuss work-related matters, or cut short by 20 minutes in order to return to work assisting his coworkers or customers.

Third, as stated, on information and belief, because NORCAL frowned upon employees accruing meal period penalties, NORCAL's management pressured Mr. Seitz and other aggrieved employees to clock out for meal periods, upon threat of discipline, and/or would adjust Mr. Seitz's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by NORCAL. For example, Mr. Seitz was sometimes required to clock out for her meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. Moreover, as stated, NORCAL's company-wide timekeeping system prevented Mr. Seitz and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Seitz and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Also, NORCAL did not provide Mr. Seitz and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Seitz would work shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period.

Mr. Seitz and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

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

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

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

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

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

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

During the relevant time period, NORCAL regularly failed to authorize and permit Mr. Seitz and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, NORCAL's policies and/or practices of understaffing and assigning heavy workloads prevented Mr. Seitz and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. NORCAL also failed to schedule rest periods, which, coupled with NORCAL's failure to provide adequate rest period coverage, further led to Mr. Seitz and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, NORCAL's company-wide timekeeping system prevented Mr. Seitz and other aggrieved employees from recording when their rest periods were shortened or interrupted, because the system locked out Mr. Seitz and other aggrieved employees once they "clocked out" for a rest period, and would not permit them to "clock back in" from a rest period before 10 minutes had elapsed.

Furthermore, upon information and belief, NORCAL maintained a company-wide on-premises rest period policy, which mandated that Mr. Seitz and other aggrieved employees remain on NORCAL's premises during their rest periods. Because Mr. Seitz and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as going home or running personal errands. Thus, NORCAL effectively maintained control over Mr. Seitz and other aggrieved employees during rest periods.

As a result of NORCAL's practices and policies, Mr. Seitz and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Seitz worked through his shifts without taking his 10-minute rest periods due to the workload, the lack of coverage, and failure to schedule rest periods, or would have his rest periods interrupted to respond to phone calls from management, handle problems with the cash register, or address equipment emergencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

During the relevant time period, NORCAL failed to pay Mr. Seitz and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period

premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

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

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

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

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

During the relevant period, NORCAL required Mr. Seitz and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, Mr. Seitz once worked approximately 13 consecutive days without being afforded the opportunity to take one day's rest. Because Mr. Seitz and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Seitz and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, NORCAL caused Mr. Seitz and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Seitz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the . . .

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

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

On information and belief, NORCAL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because NORCAL failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. For example, on occasions when employees reported to work for their scheduled shifts, NORCAL’s management sent employees home within the first two hours of clocking in because business was slow. When this would occur, NORCAL did not pay other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject work for less than half of the regular schedule. Although other aggrieved employees reported to work based on the schedule that NORCAL provided to them, NORCAL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

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

NORCAL willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because NORCAL failed to pay Mr. Seitz and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. Accordingly, NORCAL required Mr. Seitz and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

NORCAL’s failure to provide Mr. Seitz and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an

hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, section 11050(4)(C). Mr. Seitz and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

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

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

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

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

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

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

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

standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, NORCAL had a company-wide policy of requiring Mr. Seitz and other 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, Mr. Seitz periodically was required to drive to NORCAL's 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. NORCAL also required Mr. Seitz to drive to nearby banks to make bank deposits for the restaurant. Mr. Seitz estimates he drove approximately 250 miles per month in order to fulfill his work-related duties. Although NORCAL required Mr. Seitz and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, NORCAL did not reimburse them for their travel expenses.

Second, during the relevant time period, NORCAL, on a company-wide basis, required Mr. Seitz and other 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, Mr. Seitz was required to use his personal cellular phone to respond to calls and text messages from his supervisors or managers regarding work-related tasks, such as bank drops, to send photographs, and to utilize his GPS navigation when running errands. Although NORCAL required Mr. Seitz and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, NORCAL failed to reimburse them for these costs.

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

Fourth, during the relevant time period, NORCAL expected Mr. Seitz and other aggrieved employees to report to work in clean and presentable uniforms bearing the Burger King logo, including uniform shirts. However, NORCAL did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, NORCAL only provided Mr. Seitz and other aggrieved employees with one or two sets of uniforms during their employment. Because NORCAL failed to provide Mr. Seitz and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Seitz and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. For example, due to the nature of restaurant work, Mr. Seitz's and other aggrieved employees' uniforms would become stained with grease or cleaning chemicals, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their other clothing items and incur additional laundry expenses for the upkeep of their uniforms. Thus, NORCAL failed to maintain the uniforms it required Mr. Seitz and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

NORCAL could have provided Mr. Seitz and other aggrieved employees with the actual tools for use on the job, such as company vehicles, company mobile devices, supplies and tools, face masks, and an adequate number of uniforms or access to laundering services. Or, NORCAL could have reimbursed employees for their mileage; travel expenses; mobile device usage; tool, supply, and/or equipment expenses; and costs of their laundering expenses or provided a uniform maintenance allowance. Instead, NORCAL passed these operating costs off onto Mr. Seitz and other aggrieved employees. At all relevant times, Mr. Seitz did not earn at least two (2) times the minimum wage.

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

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

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

At all relevant times, on information and belief, NORCAL failed, on a company-wide basis, to provide written notice to Mr. Seitz and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). NORCAL's failure to provide Mr. Seitz and other aggrieved employees with written notice of basic information regarding their employment with NORCAL is in violation of Labor Code section 2810.5.

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

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

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

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Seitz seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Seitz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against NORCAL for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

Pre-Litigation Demand

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

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

1. NORCAL shall pay Mr. Seitz and all other aggrieved employees employed by NORCAL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. NORCAL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. NORCAL shall conduct a survey or interview all current and former aggrieved employees in California who worked for NORCAL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses; mileage; mobile device expenses; tools, supplies, and/or equipment costs; laundering expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. NORCAL shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code

sections 226.7, 512(a), 516, and 1198. NORCAL also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. NORCAL shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for NORCAL's benefit, including, but not limited to, travel expenses; mileage, mobile device usage; tools, supplies, and/or equipment costs; laundering expenses; or other expenditures, as required by Labor Code section 2802.
6. NORCAL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. NORCAL shall provide Mr. Seitz and all aggrieved employees employed by NORCAL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. NORCAL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. NORCAL shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. NORCAL shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. NORCAL shall pay Mr. Seitz and each other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as required by California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C).
12. NORCAL shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
13. NORCAL shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
14. NORCAL shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
15. NORCAL shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: NOR CAL FAST FOODS , INC. (via U.S. Certified Mail)

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



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