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Superior Court of California,
County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ANGELA OHLER, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CLUCKIN, INC.; CLUCKIN 1 LP;
CLUCKIN 2 LP; CLUCKIN 3 LP;
CLUCKIN 4 LP; MOTHER CLUCKIN LLC;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2021-00053292-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Conversion
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Violations of the Unfair Competition Law
- 10-18. Claims for Civil Penalties under PAGA

Judge: Hon. Katherine Bacal
Dept.: C-69
Action Filed: December 21, 2021

1 Plaintiff ANGELA OHLER (“Plaintiff”), on behalf of a class of all other similarly situated
2 current and former employees and the State of California, brings this class and representative action
3 against Defendants CLUCKIN, INC.; CLUCKIN 1 LP; CLUCKIN 2 LP; CLUCKIN 3 LP;
4 CLUCKIN 4 LP; MOTHER CLUCKIN LLC; and DOES 1 through 50 (collectively,
5 “Defendants”), alleging as follows¹:

6 **INTRODUCTION**

7 1. This is a class and representative action filed for wage and hour violations of the
8 California Labor Code.

9 2. Plaintiff worked for Defendants as a Shift Manager and Assistant General Manager
10 for Defendants. Defendants deprived Plaintiff and other employees of minimum, regular, and
11 overtime wages through their practice of editing employees’ time records to avoid and/or reduce
12 overtime (*i.e.*, timeshaving). Defendants created false meal period entries, such that Plaintiff and
13 other employees were not paid for work performed during uncompensated 30-minute meal periods.
14 Defendants also altered employees’ meal period entries in the timekeeping system to make short or
15 late meal periods appear compliant (*i.e.*, 30 minutes in length, taken by the fifth hour). Defendants
16 did not pay Labor Code § 226.7 premiums at the regular rate of compensation for non-compliant
17 meal periods and rest periods—including late, short, and missed meal periods evident on the face of
18 Defendants’ employment and payroll records. Defendants also kept all of Plaintiff and Class
19 Members’ cash tips and instituted an invalid mandatory tip pool with respect to employees’ credit
20 card tips. As a result of these violations, Defendants failed to timely pay Plaintiff and Class
21 Members each pay period on paydays and upon separation of employment, and thus are liable for
22 waiting time and other statutory penalties.

23 3. Defendants’ employment policies and practices and payroll administration systems
24 enabled and facilitated these violations on a company-wide basis with respect to the Class
25 Members.

26
27 ¹ Plaintiff amends the original complaint without leave of court pursuant to Labor Code § 2699.3(a)(2)(C),
28 which states “[n]otwithstanding any other provision of law [including C.C.P. § 472], a plaintiff may as a matter of right
amend an existing complaint to add a cause of action arising under this part [Labor Code § 2698 et seq.] at any time
within 60 days of the time periods specified in this part [*i.e.*, after the 65-day notice period has expired].”

JURISDICTION & VENUE

4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution.

5. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

PARTIES

A. The Plaintiff Angela Ohler

6. Plaintiff ANGELA OHLER is an individual over 18 years of age who worked for Defendants in San Diego County as an hourly, non-exempt Shift Lead and Assistant General Manager.

7. Plaintiff was employed by Defendants in California from September 21, 2020 through October 4, 2021. During her employment Plaintiff worked in at least two of Defendants' locations.

B. The Dave's Hot Chicken Defendants

8. Throughout the relevant statutory limitations periods, each of the named defendants was a legal employer of Plaintiff and Class Members.

9. Defendants do business in California as "Dave's Hot Chicken."

10. Plaintiff is informed, believes, and alleges that Defendant CLUCKIN, INC. is a corporation incorporated in the State of California, doing business and employing labor throughout California, including San Diego, California.

11. Plaintiff is informed, believes, and alleges that Defendant CLUCKIN 1 LP is a Limited Partnership formed in the State of California, doing business and employing labor throughout California, including San Diego, California.

12. Plaintiff is informed, believes, and alleges that Defendant CLUCKIN 2 LP is a Limited Partnership formed in the State of California, doing business and employing labor throughout California, including San Diego, California.

1 13. Plaintiff is informed, believes, and alleges that Defendant CLUCKIN 3 LP is a
2 Limited Partnership formed in the State of California, doing business and employing labor
3 throughout California, including San Diego, California.

4 14. Plaintiff is informed, believes, and alleges that Defendant CLUCKIN 4 LP is a
5 Limited Partnership formed in the State of California, doing business and employing labor
6 throughout California, including San Diego, California.

7 15. Plaintiff is informed, believes, and alleges that Defendant MOTHER CLUCKIN
8 LLC is a Limited Liability Company incorporated in the State of California, doing business and
9 employing labor throughout California, including San Diego, California.

10 16. Plaintiff is informed, believes, and alleges that no class action asserting similar
11 factual allegations has been filed against any of the named defendants within the preceding three
12 years.

13 17. The true names and capacities, whether individual, corporate, or otherwise, of the
14 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
15 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
16 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
17 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
18 capacities when they become known.

19 18. Plaintiff is informed, believes, and alleges that all defendants in this action are
20 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
21 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
22 employees, suffers and permits them to work, and engages the workforce creating a common law
23 employment relationship.

24 19. Additionally, all defendants have common ownership, common management,
25 interrelationship of operations, and centralized control over labor relations and are therefore part of
26 an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
27 herein. Defendants operate as employers of the Class in their operation of the Dave's Hot Chicken
28 Restaurants.

20. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

GENERAL ALLEGATIONS

21. Defendants failed to pay all minimum, regular, and overtime wages to employees as a result of their practice of altering employees' records after the fact to eliminate or reduce overtime or to insert meal periods that were never taken. Defendants engaged in a pattern of editing employees' time records that resulted in an underpayment of wages to Plaintiff and Class Members. During times in which Plaintiff and Class Members could not take a compliant meal period, Defendants maintained a policy and practice of editing or changing time records to manually enter one or two 30-minute meal periods into the respective employee's time records, even though Plaintiff and other Class Members worked during these meal periods. Defendants and their agents made the revisions without employees' knowledge or consent and the revisions are evident from Defendants' Time Entries Audit reports, which also show the name of the person who edited the applicable entry. As a result of this practice, Defendants deprived Plaintiff and other Class Members of 30 minutes (or 1 hour) of compensation, requiring them to effectively work off the clock without pay due to the time adjustments and edits. Plaintiff and Class Members were deprived of the hourly overtime and minimum wages, as applicable, for these hours worked during periods marked as unpaid meal periods.

22. Defendants also edited employees' time records for the purpose of avoiding or reducing overtime hours works, resulting in a loss of overtime wages to Plaintiff and the Class Members.

23. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute meal periods to Class Members within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are

1 synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay”
2 under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”])
3 Defendants and their agents also altered employees’ time records to insert first and second meal
4 period times (when none were taken) or to make employees’ meal period entries appear compliant
5 (i.e., taken by the 5th hour, 30 minutes in length).

6 24. When Defendants did not provide fully compliant meal periods, Defendants failed to
7 pay Class Members a meal period premium at the regular rate of compensation in violation of
8 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) “[T]ime records showing noncompliant
9 meal periods raise a rebuttable presumption of meal period violations, including at the summary
10 judgment stage.” (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.) Defendants’ policy
11 and practice of not paying all meal period premiums at the lawful rate is a matter of common
12 corporate policy and payroll administration such that it applies and affected all other Class
13 Members and are evident from the time records and time record edits maintained by Defendants,
14 which show late, short and missed meal periods without an associated meal period premium on the
15 corresponding employee wage statement.

16 25. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for every
17 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
18 section 12 of the applicable IWC Wage Order. Defendants also informed Plaintiff and other Class
19 Members that employees were only entitled to one ten-minute rest period in an eight-hour shift.
20 Additionally, Defendants had a practice whereby they required employees to record rest periods in
21 the timekeeping system. If an employee recorded a rest period, they would be paid for 10-minutes
22 of rest period time and any time exceeding 10 minutes would be unpaid. On days when Plaintiff
23 and the Class Members did not take all of their rest periods, Defendants and their agents
24 nonetheless entered rest period times (without employees’ knowledge) to make it appear as though
25 employees took rest periods. These false entries are reflected in Defendants’ Time Entries Audit.

26 26. When Defendants did not provide a fully compliant rest period to Plaintiff or other
27 Class Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium
28 at the lawful “regular rate of compensation” in violation of Labor Code section 226.7.

1 27. Defendants kept all cash tips that were left for Plaintiff and the Class Members.
2 Defendants kept and did not redistribute the cash tips left by customers and instructed employees to
3 include the cash tips as part of the final money count in the cash registers at the end of the closing
4 shift. Defendants did not keep any record of the cash tips which were essentially incorporated into
5 Defendants' sales for each location.

6 28. Defendants required Plaintiff and Class Members to participate in an unlawful
7 mandatory tip pool that was comprised of all credit card gratuities received at each location.
8 Defendants maintained a policy and practice of distributing the credit card gratuities to managers,
9 supervisors, and employees outside the chain of service, including but not limited to individuals
10 who did not work at one of Defendants' restaurant locations.

11 29. With respect to the unpaid wages and premiums owed to Plaintiff and Class
12 Members, Defendants failed to pay those wages on time each pay period or upon separation of
13 employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums owed
14 each pay period their employment, Defendants failed to timely pay all wages owed each pay day or
15 upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections
16 201 through 203 (waiting time) and 204 and 204b (paydays).

17 30. Defendants equally failed in their affirmative obligation to provide accurate itemized
18 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
19 statements to Plaintiff and, on information and belief, other Class Members, which contain at least
20 several types of violations.

21 31. First, on each wage statement furnished, Defendants failed to accurately state the
22 "gross wages earned" and "net wages earned" in violation of Labor Code § 226(a)(1) and (5), as
23 Plaintiff and Class Members earned regular and overtime wages, but were underpaid (due to
24 timesaving and time record alterations), and were deprived of all meal and rest period premiums
25 earned at the lawful rate, resulting in an inaccurate itemization of gross and net wages earned on
26 those wage statements.

27 32. Second, on each wage statement furnished to Plaintiff and, on information and
28 belief, the Class Members, Defendants failed to accurately state "all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
3 Class Members do not accurately list the actual hours worked by employees (due to timeshaving
4 and time record alterations), but instead list deflated hours and wages.

5 33. Third, Defendants inaccurately listed total hours worked during the pay period, as
6 Plaintiff and Class Members worked off-the-clock during times that were Defendants edited time
7 records to (1) reduce hours worked or (2) insert false meal periods, resulting in an inaccurate
8 reflection of total hours worked on those corresponding wage statements.

9 34. Defendants’ wage statement issues described above rendered the wage statements
10 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
11 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
12 Members as the sole documentary evidence of their respective earnings.

13 35. Plaintiff and Class Members suffered injury in the form of confusion regarding
14 amounts paid for hours worked, and in the form of concealment of the common payroll practices
15 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
16 this Complaint.

17 36. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
18 and misled by the wage statements wages, hours, rates, and earnings. As a result of the
19 inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were
20 led to believe that the hourly rates and net and gross wages reflected were a complete and accurate
21 reflection of the wages actually earned under California law.

22 37. Defendants’ wage statement violations were knowing and intentional as a matter of
23 law with respect to Plaintiff and California Class Members given that the legal obligation was not
24 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
25 Defendants nevertheless failed to comply despite the means and ability to do so.

26 38. Because of the violations set forth in this Complaint, including Defendants’ failure
27 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
28 (i.e., unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC

1 Wage Orders by failing to maintain records showing accurate daily hours worked at the
2 corresponding wage rate, and the wages paid to each employee.

3 39. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
4 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
5 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
6 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
7 under California law.

8 **CLASS ACTION ALLEGATIONS**

9 40. ***Class Definition.*** The named individual Plaintiff seeks class certification under
10 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- 11 a. All individuals currently or formerly employed by Defendants in the State of
12 California as hourly non-exempt employees at any time from
13 **December 21, 2017** through the time of trial in this action (the "Class" or
14 "Class Members" and the "Class Period").

15 41. Further, Plaintiff proposes the following subclasses:

- 16 a. All Class Members who separated from employment with Defendants at any
17 time from **December 21, 2018** through the time of trial in this action (the
18 "Waiting Time Subclass").
- 19 b. All Class Members who received a wage statement from Defendants at any
20 time from **December 21, 2020** through the time of trial in this action ("Wage
21 Statement Subclass").
- 22 c. All Class Members who worked shifts of five hours or more without a duty-
23 free meal period of at least 30 minutes, who were not paid one hour of pay at
24 the regular rate of compensation for each of those days ("Meal Period
25 Subclass").
- 26 d. All Class Members who worked shifts of four hours or major fraction thereof
27 without being authorized or permitted an uninterrupted rest period of at least
28

1 10 minutes, who were not paid one hour at the regular rate of compensation
2 for each of those days (“Rest Period Subclass”).

3 e. All Class Members who were not paid all regular, overtime, or minimum
4 wages for all hours worked each pay period (“Unpaid Wage Subclass”).

5 42. Plaintiff reserves the right to move the Court to amend or modify the class
6 definitions and to establish additional classes and subclasses as appropriate.

7 43. **Numerosity.** The members of the Class are so numerous that joinder of all
8 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
9 of Defendants’ employment and payroll records. Plaintiff is informed, believes, and alleges there
10 are more than 40 Class Members.

11 44. **Adequacy of Representation.** Plaintiff is an adequate class representative. Plaintiff
12 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
13 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
14 wage-and-hour class actions in California state and federal courts.

15 45. **Manageability.** This class action is manageable because the liability and damages to
16 Class Members can be ascertained by review of corporate and employer timekeeping and payroll
17 records along with other evidence that Defendants maintained and are required by law to maintain
18 under the California Labor Code, IWC Wage Orders and federal law. This class action is
19 manageable because the contact information and identity of percipient witnesses—namely,
20 Defendants’ employees (the putative class members)—is readily maintained by Defendants.

21 46. **Superiority.** A class action is superior to other means for adjudication of the claims
22 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
23 for the common issues to be resolved in a single forum, simultaneously and without duplication of
24 effort and expense.

25 47. **Commonality.** Common questions of law and fact and a community of interest
26 exists amongst Plaintiff and the Class. These common issues arise from the employment
27 relationship with Defendants and predominate over any individual issues.
28

48. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members.

49. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

50. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as follows:

a. All current and former non-exempt hourly employees who worked for Defendants in the State of California during the period of December 6, 2020 through the time of trial (“PAGA Period”).

51. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to Plaintiff’s claims under the Private Attorneys General. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

52. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the Labor Code violations committed by Defendants and alleged in this Complaint. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”]).

53. “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an

1 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
2 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

3 54. On **December 6, 2021**, Plaintiff gave written notice by online filing with the LWDA
4 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
5 been violated, including the facts and theories to support the alleged violations (the “**PAGA**
6 **Notice**”). Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA
7 Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

8 55. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
9 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
10 actions taken to cure the alleged violations.

11 56. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
12 violations, without any notice of cure from them or notice from the LWDA of its intent to
13 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
14 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

15 57. Any allegations regarding violations of the IWC Wage Orders are enforceable as
16 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
17 hours than those fixed by the order or under conditions of labor prohibited by the order is
18 unlawful.”

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL MINIMUM WAGES**

21 **Labor Code §§ 1194 and 1194.2**

22 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

23 58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 59. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
25 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
26 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
27 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
28 local and county minimum wage ordinances in effect.

1 60. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
2 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
3 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
4 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees,
5 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **Labor Code §§ 510 and 1194**

9 61. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 62. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
11 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
12 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
13 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
14 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
15 day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the IWC Wage
16 Orders (the "Hours and Days of Work" sections of the applicable orders).

17 63. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
18 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
19 to the full amount of the unpaid overtime wages, in addition to interest, attorneys' fees, and costs to
20 the extent permitted by law, including under Labor Code section 1194.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **Labor Code §§ 226.7 and 512**

24 64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 65. Defendants willfully failed in their affirmative obligation to consistently provide
26 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes
27 beginning before the fifth hour of hour for each work period of more than five hours per day and a
28 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of

work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

66. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

67. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of meal periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Labor Code §§ 226.7 and 516

68. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

69. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

70. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

71. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

1 **FIFTH CAUSE OF ACTION**

2 **CONVERSION**

3 72. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 73. At all times relevant to this Complaint, Defendants had an obligation to pay all
5 gratuities left for Plaintiff and the Class Members, but instead unlawfully converted employees'
6 gratuities. *Lu v. Hawaiian Gardens Casino, Inc.* (2010) 50 Cal. 4th 592, 603-604; *Voris v. Lampert*
7 (2019) 7 Cal. 4th 1141, 1154-55.

8 74. Labor Code section 351 states that no "employer" shall take any gratuity "left for an
9 employee by a patron" and that "[e]very gratuity is hereby declared to be the sole property of the
10 employee or employees to whom it was paid, given, or left for." Labor Code section 350,
11 subdivisions (a) and (d), specifically define "employer" and "agent" to include "every person other
12 than the employer having the authority to hire or discharge any employee or supervise, direct, or
13 control the acts of employees. Only employees who are involved in the line of service are entitled
14 to participate in what is commonly called a "tip pool." *Leighton v. Old Heidelberg, Ltd.* (1990) 219
15 Cal. App. 3d 1062, 1069-70.

16 75. The gratuities left by patrons belonged to Plaintiff and Class Members at the time
17 their labor and services were provided to Defendants.

18 76. Defendants knowingly and intentionally interfered with Plaintiff and Class
19 Members' ownership, and right to possess gratuities left by patrons by: (1) keeping all cash tips and
20 (2) unlawfully distributing credit card tips to individuals who should not have been in the tip pool
21 under California law.

22 77. Defendants converted Plaintiff and Class Members gratuities as part of an intentional
23 and deliberate scheme to maximize their profits at the expense of employees. As a proximate result
24 of the conversion by Defendants, Plaintiff and Class Members are entitled to the return of owed
25 gratuities converted by Defendants, in an amount according to proof at trial. Plaintiff and Class
26 Members were injured by Defendants' conversion and are entitled to all monies converted, with
27 interest thereon, along with interest, attorneys' fees, and costs.
28

1 **SIXTH CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

3 **Labor Code §§ 204, 204b and 210**

4 78. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 79. Defendants willfully failed in their affirmative obligation to timely pay all wages and
6 premiums earned by Plaintiff and Class Members twice during each calendar month on days
7 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
8 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of
9 Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of
10 the applicable orders).

11 80. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of timely
12 wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full
13 amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial
14 violation for each failure to pay each employee and \$200 for all subsequent violations and for all
15 willful or intentional violations for each failure to pay each employee, plus 25 percent of the
16 amount unlawfully withheld under provided in Labor Code section 210, in addition to interest,
17 attorneys’ fees, and costs to the extent permitted by law.

18 **SEVENTH CAUSE OF ACTION**

19 **WAGE STATEMENT VIOLATIONS**

20 **Labor Code § 226**

21 81. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 82. Defendants knowingly and intentionally failed in their affirmative obligation provide
23 accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code
24 section 226(a).

25 83. As an initial matter, on information and belief, Plaintiff alleges that Defendants
26 maintained a policy and practice of non-compliance with Labor Code section 226(a)’s statutory
27 mandate by failing to issue or make available wage statements to Class Members each pay period
28 that list any of the information required by Labor Code section 226.

1 84. Moreover, based on the wage statements issued by Defendants, Plaintiff alleges that
2 these wage statements fail to correctly list (1) gross wages earned each pay period, (2) total hours
3 actually worked each pay period, (5) net wages earned, (9) all hourly rates in effect and the total
4 number of hours worked each pay period.

5 85. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
6 itemized wage statements, causing confusion and concealing wage and premium underpayments.
7 As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee
8 for the initial pay period in which a violation occurred and \$100 per employee for each violation in
9 a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest,
10 attorneys' fees, and costs to the extent permitted by law, including under Labor Code section
11 226(e).

12 **EIGHTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **Labor Code §§ 201 through 203**

15 86. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

16 87. Defendants willfully failed in their affirmative obligation to pay all wages earned
17 and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination
18 of employment or within 72 hours thereafter for employees who did not provide at least 72 hours
19 prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter
20 in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

21 88. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely
22 wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class
23 are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a
24 waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs
25 to the extent permitted by law.

26 **NINTH CAUSE OF ACTION**

27 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

28 **Business and Professions Code §§ 17200, *et seq.***

1 89. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

2 90. Defendants willfully failed in their affirmative obligation to timely pay each payday
3 or at other required intervals all minimum, regular, and overtime wages, and meal and rest period
4 premium wages, and gratuities to Plaintiff and Class Members. These failures constitute unlawful,
5 deceptive, and unfair business acts and practices in violation of Business and Professions Code
6 section 17200, et seq.

7 91. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
8 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of
9 all monies, gratuities, and property withheld, acquired, or converted by Defendants in violation of
10 the Labor Code and IWC Wage Orders under Business and Professions Code section 17202, 17203,
11 17204 and 17208.

12 92. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
13 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
14 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
15 which Plaintiff and the Class have an ownership interest and to prevent future damage under
16 Business and Professions Code section 17200, et seq. in addition to interest, attorneys' fees, and
17 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

18 **TENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES FOR FAILURE TO PAY ALL REGULAR AND**
20 **MINIMUM WAGES (PAGA)**

21 **Labor Code §§ 2698, et seq.**

22 93. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 94. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,
24 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
25 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
26 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
27 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
28 former employees pursuant to the procedures specified in Section 2699.3."

1 95. Labor Code section 2699(f) provides: “For all provisions of this code except those
2 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
3 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
4 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
5 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
6 employee per pay period for each subsequent violation.”

7 96. Labor Code § 204(a) states that all wages earned are due and payable twice during
8 each calendar month on days designated in advance by the employer as regular pay days. Overtime
9 wages are to be paid no later than the payday for the next regular payroll period. (Labor Code §
10 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee
11 as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and
12 \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

13 97. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
14 of an employer who violates, or causes to be violated, a section of this chapter or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
16 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
17 underpaid employee for each pay period for which the employee was underpaid in addition to an
18 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
19 dollars (\$100) for each underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover underpaid wages.”

21 98. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
23 the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage
24 Order further provides that “[e]very employer shall pay to each employee, on the established
25 payday for the period involved, not less than the applicable minimum wage for all hours worked in
26 the payroll period, whether the remuneration is measured by time, piece, commission, or
27 otherwise.”

1 99. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
2 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
3 any employee a wage less than the minimum fixed by an applicable state or local law, or by an
4 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
5 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
6 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
7 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
8 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
9 underpaid employee for each pay period for which the employee is underpaid regardless of whether
10 the initial violation is intentionally committed.”

11 100. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
12 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
13 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
14 and “Minimum Wages” sections of the applicable orders).

15 101. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
16 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
17 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
18 and costs to the extent permitted by law, including under Labor Code section 2699(g).

19 **ELEVENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME (PAGA)**

21 **Labor Code §§ 2698, *et seq.***

22 102. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 103. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
24 employees no less than one and one-half times their respective “regular rate of pay” for all hours
25 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
26 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
27 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
28

1 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders
2 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

3 104. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **TWELFTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

9 **Labor Code § 226.7**

10 105. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 106. Defendants willfully failed in their affirmative obligation to consistently provide
12 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
13 beginning before the fifth hour of hour for each work period of more than five hours per day and a
14 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
15 work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the “Meal
16 Periods” sections of the applicable orders)..

17 107. Further, Defendants willfully failed in their affirmative obligation to consistently pay
18 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
19 compensation for each workday that a fully compliant meal period was not provided, in violation of
20 Labor Code sections 226.7 and the IWC Wage Orders.

21 108. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
22 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
23 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
24 to the extent permitted by law, including under Labor Code section 2699(g).

25 **THIRTEENTH CAUSE OF ACTION**

26 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

27 **Labor Code § 226.7**

28 109. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 110. Defendants willfully failed in their affirmative obligation to consistently authorize
2 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
3 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor
4 Code sections 226.7, 516, 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
5 applicable orders).

6 111. Further, Defendants willfully failed in their affirmative obligation to consistently pay
7 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
8 compensation for each workday that a fully compliant rest period was not provided, in violation of
9 Labor Code sections 226.7 and the IWC Wage Orders.

10 112. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
11 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
12 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
13 to the extent permitted by law, including under Labor Code section 2699(g).

14 **FOURTEENTH CAUSE OF ACTION**

15 **FAILURE TO LAWFULLY DISTRIBUTE GRATUITIES (PAGA)**

16 **Labor Code §§ 2698, *et seq***

17 113. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 114. At all times relevant to this Complaint, Defendants had an obligation to pay all
19 gratuities left for Plaintiff and the aggrieved employees. *Lu v. Hawaiian Gardens Casino, Inc.*
20 (2010) 50 Cal. 4th 592, 603-604; *Voris v. Lampert* (2019) 7 Cal. 4th 1141, 1154-55.

21 115. Labor Code section 351 states that no “employer” shall take any gratuity “left for an
22 employee by a patron” and that “[e]very gratuity is hereby declared to be the sole property of the
23 employee or employees to whom it was paid, given, or left for.” Labor Code section 350,
24 subdivisions (a) and (d), specifically define “employer” and “agent” to include “every person other
25 than the employer having the authority to hire or discharge any employee or supervise, direct, or
26 control the acts of employees. Only employees who are involved in the line of service are entitled
27 to participate in what is commonly called a “tip pool.” *Leighton v. Old Heidelberg, Ltd.* (1990) 219
28 Cal. App. 3d 1062, 1069-70.

1 116. Labor Code section 353 provides: “Every employer shall keep accurate records of all
2 gratuities received by him, whether received directly from the employee or indirectly by means of
3 deductions from the wages of the employee or otherwise. Such records shall be open to inspection
4 at all reasonable hours by the department.”

5 117. The gratuities left by patrons belonged to Plaintiff and aggrieved employees at the
6 time their labor and services were provided to Defendants.

7 118. Defendants violated Labor Code section 351 by: (1) keeping all cash tips and
8 (2) unlawfully distributing credit card tips to individuals who should not have been in the tip pool
9 under California law.

10 119. In violation of Labor Code section 353, Defendants failed to maintain proper
11 recordkeeping of gratuities received by the aggrieved employees, particularly with respect to the
12 cash tips that employees were forced to include as part of the cash in the cash registers at
13 Defendants’ restaurants.

14 120. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
15 aggrieved employees and the State of California for civil penalties as required by Labor Code
16 section 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
17 by law, including under Labor Code section 2699(g).

18 **FIFTEENTH CAUSE OF ACTION**

19 **UNTIMELY PAYMENT OF WAGES (PAGA)**

20 **Labor Code § 204, *et seq***

21 121. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 122. Defendants willfully failed in their affirmative obligation to timely pay all wages and
23 premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days
24 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
25 basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in
26 violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages”
27 sections of the applicable orders).

123. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SIXTEENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS (PAGA)

Labor Code § 226

124. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

125. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

126. Defendants failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and aggrieved employees in violation of Labor Code section 226(a) because Plaintiff and aggrieved employees were not paid for all hours worked at the proper wage rates and the wage statements reflected inaccurate totals, including gross and net wages earned, total hours worked, applicable rates in effect and corresponding number of hours worked.

127. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SEVENTEENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT (PAGA)

Labor Code §§ 201 through 203

128. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 129. Defendants willfully failed in their affirmative obligation to pay all wages earned
2 and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or
3 within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or
4 her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of
5 Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are
6 those due to Defendants failure to pay employees for all hours worked and for meal and rest period
7 premiums.

8 130. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
9 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
10 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
11 to the extent permitted by law, including under Labor Code section 2699(g).

12 **EIGHTEENTH CAUSE OF ACTION**

13 **RECORDKEEPING VIOLATIONS (PAGA)**

14 **Labor Code § 1174**

15 131. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

16 132. Labor Code section 1174 provides: "Every person employing labor in this state shall:
17 ... (d) Keep, at a central location in the state or at the plants or establishments at which employees
18 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
19 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
20 the respective plants or establishments. These records shall be kept in accordance with rules
21 established for this purpose by the commission, but in any case shall be kept on file for not less than
22 three years."

23 133. Labor Code section 1174.5 provides: "Any person employing labor who willfully
24 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
25 records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five
26 hundred dollars (\$500)."

27 134. Defendants willfully failed in their affirmative obligation to maintain accurate
28 records showing the hours worked daily and wages paid to the aggrieved employees, in violation of

1 Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the
2 applicable orders).

3 135. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
4 aggrieved employees and the State of California for civil penalties as required by Labor Code
5 section 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
6 including under Labor Code section 2699(g).

7 **PRAYER FOR RELIEF**

8 Plaintiff prays for judgment as follows:

- 9 a. For certification of this action as a class action;
- 10 b. For appointment of Plaintiff as the representative of the Class;
- 11 c. For appointment of counsel for Plaintiff as Class Counsel;
- 12 d. For injunctive relief;
- 13 e. For compensatory damages in amount according to proof;
- 14 f. For all recoverable pre- and post-judgment interest;
- 15 g. For recovery of all statutory penalties and liquidated damages;
- 16 h. For disgorgement of all amounts wrongfully obtained;
- 17 i. For this action to be maintained as a representative action under the PAGA and for
- 18 Plaintiff and counsel to be provided with all enforcement capability as if the action
- 19 were brought by the State of California or the California Division of Labor
- 20 Enforcement;
- 21 j. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 22 k. For reasonable attorneys’ fees and costs of suit, including expert fees, to the extent
- 23 permitted by law, including (without limitation) under California Labor Code
- 24 sections 218.5, 226, 1194, 2802, and Code of Civil Procedure section 1021.5;
- 25 l. For such other relief the Court deems just and proper.
- 26
- 27
- 28

1 Respectfully submitted,

3 Dated: February 10, 2022

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorney for Plaintiff Angela Ohler

Exhibit A

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

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San Diego, California 92108

Telephone: 619-693-7727
Facsimile: 619-350-6855
www.ferrarovega.com

December 6, 2021

**NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.***

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Cluckin, Inc.

406 9th Avenue, Suite 203
San Diego, CA 92101

Cluckin 1, LP

1331 India Street
San Diego, CA 92101

Cluckin 2, LP

1331 India Street
San Diego, CA 92101

Cluckin 3, LP

1331 India Street
San Diego, CA 92101

Cluckin 4, LP

1331 India Street
San Diego, CA 92101

Mother Cluckin, LLC

1331 India Street
San Diego, CA 92101

- PAGA Notice & Filing Fee -

Submitted electronically to the California
Labor and Workforce Development
Agency on **12/06/2021**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Angela Ohler (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against CLUCKIN, INC., CLUCKIN 1 LP, CLUCKIN 2 LP, CLUCKIN 3 LP, CLUCKIN 4 LP, and MOTHER CLUCKIN, LLC and all related employer entities (“Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants operate Dave’s Hot Chicken restaurants and employs individuals like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked for Defendants from September 21, 2020 to October 1, 2021 as a Shift Manager and Assistant General Manager. Throughout her employment, Claimant was an hourly, non-exempt employee. She worked at Defendants’ El Cajon and Pacific Beach locations.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for **Defendants** in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Overtime and Minimum Wage Violations
Violation of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage *for all hours* worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime

compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Defendants failed to pay Claimant and the aggrieved employees for all hours worked because of Defendants’ practice of editing employees’ time records to avoid/reduce overtime and to insert false meal period entries (*i.e.*, timeshaving). Defendants engaged in a pattern of editing employees’ time records that resulted in an underpayment of regular and overtime wages to Claimant and the aggrieved employees. The revisions were made without employees’ knowledge or consent and are evident from Defendants’ Time Entries Audit reports which also show the name of the person who edited the applicable entry. During Claimant’s employment, Defendants’ agents altered her time records to insert first and second meal period times (when none were taken) or to make her meal period entries appear compliant (*i.e.*, taken by the 5th hour, 30 minutes in length). Claimant and the aggrieved employees were deprived of regular and overtime wages each time Defendants altered their time records to make it appear as though they had taken a 30-minute meal period when in reality they had a shorter/interrupted meal period or no meal period at all. Defendants also altered Claimant’s clock out times to reduce or eliminate Claimant’s overtime hours. Claimant is informed and believes that other employees suffered the same violations.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee

for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

During Claimant’s employment, Defendants failed to pay her meal period premiums for times when she involuntarily experienced late, short, interrupted, or missed meal periods. Claimant and the aggrieved employees experienced meal period violations due to the busy flow of customers and were not paid meal period premiums. Furthermore, as discussed above, Defendants’ time records show that Defendants’ agents edited Claimant’s time records (without her knowledge) to make it appear as though Claimant took compliant meal periods during times when she did not. For example, Defendants created meal period entries in Defendants’ timekeeping system for shifts in which Claimant took no meal period. As another example, on days when Claimant recorded late meal periods (*i.e.*, after the 5th hour) Defendants’ agents revised the time of the meal period entry to make it appear as though Claimant took her meal period before the fifth hour of work. These meal period violations apply to all other aggrieved employees whose wages were calculated and paid by Defendants as engaged in the same payroll practices of not providing meal periods when due with respect to other aggrieved employees as well as editing employees’ time records to make it appear as though compliant meal periods were taken.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

For the same reasons as set forth above in the meal period section, and on information and belief, the aggrieved employees were not authorized or permitted to take all of their rest periods and Defendants had a policy and practice of not paying rest period premiums when due. At the beginning of her employment, Defendants informed Claimant (and the aggrieved

employees) that employees were only allowed to take one ten-minute rest period in an eight-hour shift. Defendants and their agents enforced this policy with respect to the aggrieved employees. Furthermore, Defendants had a practice whereby it required employees to record rest periods in the timekeeping system. If an employee recorded a rest period, they would be paid for 10-minutes of rest period time and any time exceeding 10 minutes would be unpaid. On days when Claimant and the aggrieved employees did not take rest periods, Defendants and their agents nonetheless entered rest period times (without employees' knowledge) to make it appear as though employees took rest periods. These false entries are reflected in Defendants' Time Entries Audit.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Lawfully Distribute Gratuities **Violation of Labor Code §§ 351, 353, 354**

Defendants failed to properly distribute and keep records of tips left for Claimant and the aggrieved employees, in violation of Labor Code sections 351, 353, and 354. Defendants also violated Labor Code section 351, which prohibited Defendants from collecting, taking or receiving any gratuity that is paid to, given to, or left for Claimant and other aggrieved employees.

Labor Code section 351 states that no "employer" shall take any gratuity "left for an employee by a patron" and that "[e]very gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for." Labor Code section 350, subdivisions (a) and (d), specifically define "employer" and "agent" to include "every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees. Only employees who are involved in the line of service are entitled to participate in what is commonly called a "tip pool." *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal. App. 3d 1062, 1069-70.

Claimant and other aggrieved employees earned cash and credit card gratuities from the sale of Defendants' food. When customers paid for their food by credit card, they were given the option to leave a tip. Customers also left cash tips.

First, Defendants kept all cash tips that were left for Claimant and the aggrieved employees, in violation of Labor Code section 350 and 351. Defendants required employees to forfeit all cash tips left by customers and instructed employees to include the cash tips as part of the final money count in the cash registers at the end of the closing shift. Defendants did not keep any record of the cash tips which were essentially incorporated into Defendants' sales for each location.

Second, Defendants required the aggrieved employees to participate in an unlawful mandatory tip pool that was comprised of all credit card gratuities received at each location. Defendants maintained a policy and practice of distributing the credit card gratuities to employees who had “the authority to hire or discharge any employee” or otherwise “supervise, direct, or control the acts of employees.” Additionally, Defendants maintained a policy and practice of sharing such gratuities with those outside the chain of service, including but not limited to individuals who did not work at one of Defendants’ restaurant locations.

Claimant and other aggrieved employees were deprived of the wages earned, were not paid gratuities in accordance with the statutorily-proscribed statute and have suffered losses as a result of this policy and practice.

Labor Code section 353 requires employers to keep accurate records of all gratuities received by the employer (whether direct or indirect) and to make those records open to inspection upon request. Defendants failed to maintain proper recordkeeping of gratuities received by the aggrieved employees, particularly with respect to the cash tips that employees were forced to include as part of the cash in the cash registers at Defendants’ restaurants.

As a result, Claimant may recover civil penalties as an individual on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees' regular, overtime, and premium pay. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203**

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate

units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Furthermore, Defendants violated Labor Code section 226(a)(2) because employees’ total hours worked were incorrect as a result of the off the clock work employees were forced to perform.

Lastly, in violation of Labor Code section 226(a)(9), the hourly rates in are incorrect for the same reasons described above. The hourly rates are inaccurately stated as the base rate for Claimant and other aggrieved employees who were paid for regular hours as a result of Defendants’ timeshaving practice when they should have been paid the overtime hourly rate for some of the hours worked.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) her lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Claimant

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