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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ERIKA LIZETH MERINO ALEJANDRO,
ADRIANA MOLINA, NICHOLAS
CEBALLOS, JOB ASCENCIO, and GERMAN
APARICIO, on behalf of the State of California
and other aggrieved persons,

Plaintiffs,

vs.

SANTA EASTVALE, INC. DBA PANINI
KABOB GRILL; PKG CATERING, INC.;
SANTA CORONA DEL MAR INVESTMENTS,
INC.; SANTA UTC, INC.; SANTA MISSION,
INC.; SANTA CENTURY, INC.; SANTA LBX,
INC.; SANTA LOS OLIVOS, INC.; SANTA
BROADWAY, INC.; SANTA MIX, INC.;
SANTA FLORITA INVESTMENTS, INC.;
SANTA CERRITOS, INC.; SANTA
JAMBOREE INVESTMENTS, INC.; SANTA
PLAY VISTA PANINI INVESTMENTS, INC.;
SANTA MIGUEL, INC.; SANTA VICTORIA
INVESTMENTS, INC.; SANTA MONICA
PANINI INVESTMENTS, INC.; SANTA
BRASSY, INC.; SAN PEDRO, INC.; SANTA
CROWN, INC.; SANANA, INC. MAH, INC.;

Case No.: CIVSB2202254

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 SANTA CULVER, INC.; SANTA CENTRAL,
2 INC.; SANTA MARINA, INC.; SANTA
3 PASEO, INC.; SANTA VAN NUYS, INC.;
4 SAINT REAL, INC.; SAINT UTC, INC.;
5 SANTA GALLERIA, INC.; FARM FOOD,
6 INC.; SANTA ESCONDIDO, INC.; SANTA
7 SUNSET, INC.; SANTA NORTHRIDGE, INC.;
8 SAINT PARK, INC.; and DOES 1 through 10,
9 inclusive,

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Defendants.

1 Plaintiff Erika Lizeth Merino Alejandro ("Plaintiff Alejandro"), Plaintiff Adriana
2 Molina ("Plaintiff Molina"), Plaintiff Nicholas Ceballos ("Plaintiff Ceballos"), Plaintiff Job
3 Ascencio ("Plaintiff Ascencio"), and Plaintiff German Aparicio ("Plaintiff Aparicio")
4 (collectively, "Plaintiffs"), based upon facts that either have evidentiary support or are likely to
5 have evidentiary support after a reasonable opportunity for further investigation and discovery,
6 allege as follows:

7 8 **INTRODUCTION & PRELIMINARY STATEMENT**

9 1. Plaintiffs bring this action against Defendants SANTA EASTVALE, INC. DBA
10 PANINI KABOB GRILL; PKG CATERING, INC.; SANTA CORONA DEL MAR
11 INVESTMENTS, INC.; SANTA UTC, INC.; SANTA MISSION, INC.; SANTA CENTURY,
12 INC.; SANTA LBX, INC.; SANTA LOS OLIVOS, INC.; SANTA BROADWAY, INC.; SANTA
13 MIX, INC.; SANTA FLORITA INVESTMENTS, INC.; SANTA CERRITOS, INC.; SANTA
14 JAMBOREE INVESTMENTS, INC.; SANTA PLAY VISTA PANINI INVESTMENTS, INC.;
15 SANTA MIGUEL, INC.; SANTA VICTORIA INVESTMENTS, INC.; SANTA MONICA
16 PANINI INVESTMENTS, INC.; SANTA BRASSY, INC.; SAN PEDRO, INC.; SANTA
17 CROWN, INC.; SANANA, INC. MAH, INC.; SANTA CULVER, INC.; SANTA CENTRAL,
18 INC.; SANTA MARINA, INC.; SANTA PASEO, INC.; SANTA VAN NUYS, INC.; SAINT
19 REAL, INC.; SAINT UTC, INC.; SANTA GALLERIA, INC.; FARM FOOD, INC.; SANTA
20 ESCONDIDO, INC.; SANTA SUNSET, INC.; SANTA NORTHRIDGE, INC.; SAINT PARK,
21 INC.; and DOES 1 through 10 (collectively referred to as "Defendants") for civil penalties under
22 the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* ("PAGA")
23 stemming from Defendants' failure to pay for all hours worked (minimum, straight time, and
24 overtime wages), failure to provide meal periods, failure to authorize and permit rest periods,
25 failure to pay all earned wages twice per month, failure to maintain accurate records of hours
26 worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage
27 statements, failure to indemnify for necessary business expenditures; failure to pay proper sick
28 leave wages, failure to provide supplemental paid sick leave, failure to provide suitable resting

1 facilities, failure to pay all gratuities earned by employees, making unlawful wage deductions,
2 failure to produce records, failure to pay reporting time wages, failure to pay vested vacation/paid
3 time off, failure to pay split shift premiums, failure to pay wages at the proper place of discharge,
4 failure to provide wage notice under Labor Code section 2810.5, requiring employees to agree to
5 unlawful conditions of employment, requiring employees to agree to unlawful criminal history
6 inquiries, and requiring employees to agree to an unlawful waiver of PAGA rights.

7 2. For over 50 years, California’s courts and legislature have recognized that this
8 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
9 Wages are not ordinary debts. Because of the economic position of the average worker and his or
10 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
11 employees are promptly paid the minimum/overtime wages that the Legislature has required for
12 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
13 criminalized certain types of violations. In extending extra protection to deter violations of these
14 underlying statutes—since Plaintiffs are not seeking general and/or special damages, restitution or
15 other damages other than civil penalties—California has enacted the PAGA to permit an individual
16 to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

17 3. All California employees during the relevant statutes of limitations who are or were
18 harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees
19 worked for Defendants as hourly-paid or non-exempt employees within the applicable statutory
20 period.

21 4. Plaintiffs bring this action against Defendants seeking only to recover penalties on
22 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
23 California. Plaintiffs do not seek to recover anything other than penalties as permitted by
24 California Labor Code Section 2699 at this time. To the extent that statutory violations are
25 mentioned for wage violations, Plaintiffs do not seek underlying general and/or special damages
26 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
27 declaratory relief, and injunctive relief for themselves and all Aggrieved Employees as permitted
28 by the PAGA.

5. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including San Bernardino County, Los Angeles County, Orange County, and other counties throughout California.

6. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employers of Plaintiffs and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Plaintiffs' claims for penalties pursuant to California statutes, including but not limited to the PAGA, and decisional law and regulations.

10. Venue is proper in this judicial district and the County of San Bernardino pursuant to California Code of Civil Procedure section 395.5 because Defendants committed Labor Code violations against employees working in this county. See also *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in any county where the defendants committed Labor Code violations against some of its employees).

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THE PARTIES

Plaintiffs

11. Plaintiff Alejandro is a resident of San Bernardino County, California, who worked for Defendants in San Bernardino County, California from approximately January 2021 to approximately June 2021.

12. Plaintiff Adriana Molina is, and at all relevant times, was an individual domiciled in the State of California and a citizen of the State of California. Plaintiff Molina has been employed by Defendants as a non-exempt employee from in or around early 2013 through 2023. Plaintiff Molina worked for Defendants as a food server and/or similar title at one or more of Defendants' Panini Kabob Grill locations, including but not limited to locations in Long Beach and West Los Angeles. Plaintiff Molina regularly worked at least six to seven hours per day, at least four to five days per week. Based on information and belief, at times during the relevant period, Plaintiff Molina worked more than eight hours per day and/or more than forty hours per week.

13. Plaintiff Ceballos was employed by Defendants in California from April of 2021 to August 10, 2021 and was at all times classified by Defendants as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

14. Plaintiff Ascencio is, and at all relevant times, was an individual domiciled in the State of California and a citizen of the State of California. Plaintiff Ascencio is a former employee of Defendants. Plaintiff Ascencio worked for Defendants as a non-exempt employee with a job title of server and/or a similar title(s) and/or position(s) from in or around October 2021 through on or around July 1, 2023. Plaintiff Ascencio worked for Defendants at Defendants' Long Beach, California location(s). Plaintiff Ascencio regularly worked at least six (6) to eight (8) hours per day, at least five (5) days per week. Defendants paid Plaintiff Ascencio an hourly rate for time counted by Defendants as hours worked.

15. Plaintiff Aparicio is, and at all relevant times, was an individual domiciled in the State of California and a citizen of the State of California. Plaintiff Aparicio is a former employee

1 of Defendants. Plaintiff Aparicio worked for Defendants as a non-exempt employee with a job title
2 of busser and/or waiter and/or a similar title(s) and/or position(s) from in or around 2012 through
3 on or around November 3, 2023. Plaintiff Aparicio worked for Defendants at Defendants' Santa
4 Monica, Century City, and Los Angeles, California location(s). Plaintiff Aparicio regularly worked
5 at least five and one-half (5½) hours per day. Defendants paid Plaintiff Aparicio an hourly rate for
6 time counted by Defendants as hours worked.

7 **Defendants**

8 16. Plaintiffs are informed and believe, and based upon that information and belief
9 allege, that Defendants are, and at all times herein mentioned, were:

- 10 (a) Corporations qualified to do business and actually conducting business in
11 numerous counties throughout the State of California, including in San
12 Bernardino County; and,
13 (b) The former employers of Plaintiffs, and the current and/or former employer
14 of the Aggrieved Employees because Defendants suffered and permitted
15 Plaintiff and the Aggrieved Employees to work, and/or controlled their
16 wages, hours, or working conditions.

17 17. Plaintiffs do not know the true names or capacities of the persons or entities sued
18 herein as Does 1-50, inclusive, and therefore sue said Defendants by such fictitious names. Each
19 of the Doe Defendants was in some manner legally responsible for the damages suffered by
20 Plaintiffs and the Aggrieved Employees as alleged herein. Plaintiffs will amend this complaint to
21 set forth the true names and capacities of these Defendants when they have been ascertained,
22 together with appropriate charging allegations, as may be necessary.

23 18. At all times mentioned herein, the Defendants named as Does 1-50, inclusive, and
24 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
25 and/or injured a significant number of the Plaintiffs and the Aggrieved Employees in the State of
26 California.

27 19. Plaintiffs are informed and believe and thereon allege that at all relevant times
28 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs

1 and the other employees and exercised control over their wages, hours, and working conditions.
2 Plaintiffs are informed and believe and thereon allege that, at all relevant times, each Defendant
3 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
4 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
5 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
6 a joint enterprise for profit, and bore such other relationships to some or all of the other
7 Defendants so as to be liable for their conduct with respect to the matters alleged below.
8 Plaintiffs are informed and believe and thereon allege that each Defendant acted pursuant to and
9 within the scope of the relationships alleged above, that each Defendant knew or should have
10 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
11 conduct of all other Defendants.

12 13 **JOINT LIABILITY**

14 20. Under California law, the definition of the terms "to employ" are broadly construed
15 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
16 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or
17 (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*,
18 49 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising
19 control was to reach situations in which multiple entities control different aspects of the
20 employment relationship. Supervision of the work, in the specific sense of exercising control over
21 how services are properly performed, is properly viewed as one of the "working conditions"
22 mentioned in the wage order. *Id.* at 76. A joint employer relationship exists, for example, when
23 one entity (such as a temporary employment agency) hires and pays a worker, and the other entity
24 supervises the work. *Id.* Moreover, the California Court of Appeal recently broadened the test for
25 joint employment in California, applying a less stringent standard to what constitutes sufficient
26 control by a business over its vendor's employees' wages and working conditions to render that
27 business liable as a joint employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th
28 868 (2021); "[i]f the putative joint employer instead exercises enough control over the intermediary

1 entity to indirectly dictate the wages, hours, or working conditions of the employee, that is a
2 sufficient showing of joint employment," Id. at 875.

3 21. During Plaintiffs' employment by Defendants, Plaintiffs and the Aggrieved
4 Employees were jointly employed by Defendants for purposes of the Wage Orders, under the
5 alternative definitions of "to employ" adopted by the California Supreme Court in Martinez, supra.
6 As discussed below, Defendants (1) exercised control over wages, hours and working conditions
7 of Plaintiffs and Aggrieved Employees; (2) suffered or permitted Plaintiffs and Aggrieved
8 Employees to work for them; and (3) engaged Plaintiffs and Aggrieved Employees to work for
9 them.

10 22. Plaintiffs are informed and believe, and thereon allege that at all relevant times
11 Defendants operated as a single integrated enterprise with common ownership and centralized
12 human resources. As a result, Defendants utilized the same unlawful policies and practices across
13 all of their locations/facilities and subjected all of the Aggrieved Employees to these same policies
14 and practices regardless of the location(s) where they worked. Among other things, Plaintiffs are
15 informed and believe that: (1) there is common ownership in, and financial control, in Defendants'
16 companies; (2) Defendants utilize common management, who have control over the day-to-day
17 operations and employment matters, including the power to hire and fire, set schedules, issue
18 employee policies, and determine rates of compensation across their locations in California; (3)
19 Defendants utilize the same policies and procedures for all California employees, including issuing
20 the same employee handbooks and other form agreements; (4) Defendants use at least some of the
21 same Human Resources personnel and attorneys to oversee employment matters; and (6)
22 Defendants share employees.

23 23. Plaintiffs are informed and believe, and thereon allege that at all times relevant to
24 this Complaint, Defendants were the joint employers of Plaintiffs and Aggrieved Employees in
25 that Defendants exercised sufficient control over Plaintiffs and the Aggrieved Employees' wages,
26 hours and working conditions, and/or suffered or permitted them to work so as to be considered
27 the joint employers of Plaintiffs and Aggrieved Employees.

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24. Upon information and belief, Plaintiffs allege that Defendants created a uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay, time-keeping practices, meal and rest periods, reimbursement of business expenses and other working conditions that were distributed to, and/or applied to Plaintiffs and Aggrieved Employees, and further that Defendants uniformly compensated and controlled the wages of Plaintiffs and other Aggrieved Employees in a uniform manner. Defendants collectively represented to Plaintiffs and other Aggrieved Employees that each was an "at-will" employee of Defendants, and that Defendants collectively retained the right to terminate Plaintiffs' and other Aggrieved Employees' employment with or without cause. Thus, Defendants collectively exercised the right to control the wages, hours and working conditions of Plaintiffs and Aggrieved Employees, including the instrumentality that resulted in the illegal conduct for which Plaintiffs seek relief in this Complaint.

25. Plaintiffs are informed and believe that Defendants exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Aggrieved Employees. By reason of their status as joint employers of Plaintiffs and Aggrieved Employees, Defendants are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to Plaintiffs and other Aggrieved Employees.

PAGA ALLEGATIONS

26. Plaintiffs bring this action under the PAGA, as a representative action on behalf of themselves, the State of California and Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

All current and former non-exempt employees that worked either directly or via a staffing agency for Defendants at any location in California at any time from one year plus 65 days from filing of the initial Complaint through the present ("PAGA Period").

27. Each Plaintiff is an "aggrieved employee," as that term is defined under Labor Code section 2699(c), as each Plaintiff was employed by Defendants during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover on behalf of themselves, the State of California, and all

1 other Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees
2 and costs. Plaintiffs have standing to bring a PAGA cause of action on behalf of the State and all
3 Aggrieved Employees. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
4 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
5 the employer—regardless of whether Plaintiff experienced all violations personally. *Id.* at 760–
6 761.

7 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

8 28. Plaintiff Alejandro has exhausted her administrative remedies pursuant to California
9 Labor Code § 2699.3. On November 23, 2021, she gave written notice by online filing to the Labor
10 and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the
11 specific provisions of the Labor Code that Defendants have violated against Plaintiff and current
12 and former Aggrieved Employees, including the facts and theories to support the violations.
13 Plaintiff also paid the filing fee on November 23, 2021. Plaintiff Alejandro filed an amended
14 PAGA Notice on or around January 28, 2022. Plaintiff’s PAGA case number is LWDA-CM-
15 854152-21 (*Merino Alejandro v. Santa Eastvale, Inc. dba Panini Kabob Grill*).

16 29. The statute of limitations is tolled while a plaintiff exhausts his or her administrative
17 remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor Code
18 § 2699.3(d).)

19 30. The statute of limitations is also tolled from April 6, 2020 to October 1, 2020
20 pursuant to Rule 9(a) of the Emergency Rules Related to COVID-19.

21 31. More than sixty-five (65) days has elapsed since Plaintiff Alejandro provided notice,
22 but the LWDA has not indicated that it intends to investigate Defendants’ Labor Code violations
23 discussed in the notice. Accordingly, Plaintiff Alejandro may pursue a civil action to recover
24 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
25 described in this Complaint. These penalties include, but are not limited to, penalties under
26 California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

27 32. On August 19, 2022, Plaintiff Molina, through counsel, gave written notice by
28 online filing with the LWDA informing it that Defendants failed to comply with California's labor

1 laws with regard to the allegations alleged in this Complaint. The LWDA assigned Plaintiff Molina
2 the following case number: LWDA-CM-902947-22. On November 17, 2022, Plaintiff Molina,
3 through counsel, gave written amended notice by online filing with the LWDA, naming additional
4 entities that employed Plaintiff Molina. On December 29, 2022, Plaintiff Molina, through counsel,
5 gave written second amended notice by online filing with the LWDA, alleging additional factual
6 and/or legal theories for violations of California's labor laws. The PAGA Notice and Amended
7 PAGA Notices were sent to Defendants via certified mail. The LWDA did not provide notice of
8 its intention to investigate Defendants' violations after expiration of the 65-day waiting period.
9 Accordingly, Plaintiff Molina has exhausted the administrative remedies as required by Labor
10 Code section 2699.3.

11 33. On February 24, 2022, Plaintiff Ceballos gave written notice by electronic mail to
12 the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged
13 to have been violated, as required by Labor Code § 2699.3. Plaintiff Ceballos's PAGA case number
14 is LWDA-CM-869884-22. The statutory waiting period has expired. As a result, pursuant to
15 Section 2699.3, Plaintiff Ceballos may now pursue a representative civil action under PAGA.

16 34. On September 14, 2023, Plaintiff Ascencio, through counsel, gave written notice by
17 online filing with the LWDA informing it that Defendants failed to comply with California's labor
18 laws with regard to the allegations alleged in this Complaint. The PAGA Notice was also sent to
19 Defendants via certified mail. The LWDA did not provide notice of its intention to investigate
20 Defendants' violations after expiration of the 65-day waiting period, or at any time. Plaintiff
21 Ascencio has exhausted the administrative remedies as required by Labor Code section 2699.3.

22 35. On February 13, 2024, Plaintiff Aparicio, through counsel, gave written notice by
23 online filing with the LWDA informing it that Defendants failed to comply with California's labor
24 laws with regard to the allegations alleged in this Complaint. The PAGA Notice was also sent to
25 Defendants via certified mail. The LWDA did not provide notice of its intention to investigate
26 Defendants' violations after expiration of the 65-day waiting period, or at any time. Plaintiff
27 Aparicio has exhausted the administrative remedies as required by Labor Code section 2699.3.

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1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 36. Plaintiff Alejandro worked for Defendants in San Bernardino County, California
3 from approximately January 2021 to approximately June 2021. At all times, Defendants paid
4 Plaintiff an hourly wage and classified her as non-exempt from overtime.

5 37. Plaintiff Molina was employed by Defendants as a non-exempt employee from in
6 or around early 2013 through 2023. Plaintiff Molina worked for Defendants as a food server and/or
7 similar title at one or more of Defendants' Panini Kabob Grill locations, including but not limited
8 to locations in Long Beach and West Los Angeles. At all relevant times, Plaintiff Molina was a
9 non-exempt employee that was paid on an hourly basis for time counted by Defendants as hours
10 worked.

11 38. Plaintiff Ceballos was employed by Defendants from April of 2021 to August 10,
12 2021, as a non-exempt employee paid on an hourly basis in San Bernardino County, California.

13 39. Plaintiff Ascencio worked for Defendants as a non-exempt server and/or similar title
14 from in or around October 2021 through on or around July 1, 2023 at Defendants' Long Beach,
15 California location(s), regularly working at least six (6) to eight (8) hours per day, at least five (5)
16 days per week.

17 40. Plaintiff Aparicio worked for Defendants as a non-exempt busser and/or waiter
18 and/or similar title from in or around 2012 through on or around November 3, 2023 at Defendants'
19 Santa Monica, Century City, and Los Angeles, California location(s), regularly working at least
20 five and one-half (5½) hours per day.

21 41. Throughout Plaintiffs' employment, Defendants committed numerous labor code
22 violations under state law. As discussed below, Plaintiffs' experiences working for Defendants
23 were typical and illustrative.

24 **Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and**
25 **Overtime Wages**

26 42. Under California law, an employer must pay for all hours worked by an employee.
27 “Hours worked” is the time during which an employee is subject to the control of an employer,

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1 and includes all the time the employee is suffered or permitted to work, whether or not required
2 to do so.

3 43. Labor Code § 510 provides that employees in California shall not be employed
4 more than eight hours in any workday or forty (40) hours in a workweek unless they receive
5 additional compensation beyond their regular wages in amounts specified by law.

6 44. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
7 be employed more than eight hours in any workday unless they receive additional compensation
8 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
9 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

10 45. Throughout the statutory period, Defendants maintained a policy and practice of not
11 paying Plaintiffs and the Aggrieved Employees for all hours worked, including minimum, straight
12 time, and overtime wages. Defendants required Plaintiffs and the Aggrieved Employees to work
13 “off-the-clock,” uncompensated, by, for example, requiring Plaintiffs and the Aggrieved
14 Employees to work unpaid prior to clocking in for the workday and during legally required meal
15 periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay
16 for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiffs
17 and the Aggrieved Employees worked.

18 46. Based on information and belief, Defendants implemented a policy and/or practice
19 of rounding meal period start and end times and/or automatically deducting at least thirty minutes
20 per shift for meal periods, despite having actual and/or constructive knowledge that Plaintiffs and
21 other Aggrieved Employees were subject to Defendants' control during purported meal periods
22 and/or were otherwise not afforded lawful meal periods, depriving Plaintiffs and Aggrieved
23 Employees of all wages owed.

24 47. Based on information and belief, Plaintiffs and other Aggrieved Employees were
25 not paid for all hours worked due to Defendants' policy and/or practice of paying according to
26 scheduled hours worked instead of actual time worked, and/or mandated off-the-clock work
27 policies and/or practices.

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1 48. For example, at times, Defendants manipulated Plaintiffs' time records in order to
2 reduce the total number of recorded hours. At times, Plaintiffs were scheduled to work shifts that
3 lasted six (6) hours. On some of those shifts, Plaintiffs' actual work time was longer than six hours.
4 On such occasions, Defendants manipulated Plaintiffs' time records such that Plaintiffs' total hours
5 worked were six hours or less and would deny Plaintiffs the opportunity to take a meal period,
6 thereby resulting in unpaid wages as well as meal period violations. At times, Plaintiffs were
7 scheduled to work shifts that lasted eight (8) hours. On some of those shifts, Plaintiffs' actual work
8 time was longer than eight (8) hours. On such occasions, Defendants required Plaintiffs to clock
9 out by the end of the eighth hour but to continue performing work tasks and/or would manipulate
10 Plaintiffs' time records such that Plaintiffs' total hours worked were eight (8) hours or less, resulting
11 in Defendants' failure to pay Plaintiffs for all work time and the underpayment of minimum wages
12 and overtime wages owed to Plaintiffs.

13 49. Defendants also failed to compensate Plaintiffs and Aggrieved Employees for time
14 spent performing job duties before clocking in to work and/or after clocking out for work. For
15 example, based on information and belief, the manager in charge of opening the restaurant was
16 required to enable the alarm and/or unlock the restaurant prior to clocking in to work. Similarly,
17 upon closing the restaurant, the manager or manager on duty was required to enable the alarm and
18 lock the restaurant after clocking out for a shift. Based on further information and belief, when
19 Plaintiffs or Aggrieved Employees were in charge of closing their location(s), they were required
20 to first clock out before enabling the alarm, turning off all the lights in the facility, and/or locking
21 the doors, resulting in additional off-the-clock post-shift work that was not compensated.

22 50. Moreover, Defendants required pre-shift off-the-clock temperature
23 checks/screenings. Defendants required Plaintiffs and Aggrieved Employees to undergo pre-shift
24 temperature screenings and fill out a form confirming that they were not experiencing any
25 symptoms related to COVID-19. The form required the employee's name, date, position and a
26 response to approximately five questions. This process resulted in at least three to seven minutes
27 of off-the-clock work depending, in part, on the number of employees that were clocking in.

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1 51. At times, Defendants' time-keeping system malfunctioned, and Plaintiffs and
2 Aggrieved Employees were required to wait a few minutes for the system to work and/or for their
3 manager to assist with the clock-in procedure, resulting in a few minutes of unpaid time.

4 52. Based on information and belief, Defendants failed to pay Plaintiffs and Aggrieved
5 Employees for time they were required to spend completing orientation, policy questionnaires,
6 and/or time spent completing the onboarding process including but not limited to reviewing various
7 documents and policies provided by Defendants. Based on information and belief, this work time
8 was completed off-the-clock and was not compensated.

9 53. Based on information and belief, Defendants did not compensate Plaintiffs and
10 Aggrieved Employees for time spent donning and doffing personal protective equipment and/or
11 uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods,
12 before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in the
13 underpayment of wages owed to Plaintiffs and Aggrieved Employees.

14 54. Based on information and belief, at times, Plaintiffs and Aggrieved Employees were
15 required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls
16 and/or messages they received to their personal phones/mobile devices and were required to
17 respond to, including but not limited to, communications from supervisors regarding scheduling
18 and/or other work tasks, resulting in the underpayment of wages owed to Plaintiffs and Aggrieved
19 Employees.

20 55. Based on information and belief, at times, Defendants required Plaintiffs and
21 Aggrieved Employees to travel between Defendants' restaurants, facilities and/or locations and/or
22 run business errands without compensating Plaintiffs and Aggrieved Employees for all travel time.

23 56. Based on further information and belief, Defendants implemented a time-rounding
24 system that, as applied, systematically deprived Plaintiffs and other Aggrieved Employees of
25 compensable time because the time-rounding system would almost always, if not always, result in
26 understating actual compensable work time.

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1 57. Based on information and belief, Defendants failed to pay Plaintiffs and Aggrieved
2 Employees the applicable minimum wage for the county and/or city within which Plaintiffs and
3 Aggrieved Employees worked in California.

4 58. Moreover, based on information and belief, Defendants failed to pay Plaintiffs and
5 Aggrieved Employees split shift premium wages when they worked split shifts during the relevant
6 period. For example, based on information and belief, at times, Defendants required Plaintiffs and
7 Aggrieved Employees to work two separate shifts in the same day. Based on information and
8 belief, Defendants failed to pay split shift compensation whenever Plaintiffs' and Aggrieved
9 Employees' work schedules were interrupted by non-paid non-working periods established by
10 Defendants, which resulted in a violation of the applicable Wage Order (see section 4 of all
11 applicable Wage Orders: "When an employee works a split shift, one (1) hour's pay at the minimum
12 wage shall be paid in addition to the minimum wage for that workday."). See also Cal. Code Regs.
13 tit. 8, § 11050. Defendants also failed to separately itemize these split shift premium wages on
14 Plaintiffs' and Aggrieved Employees' wage statements, in violation of Labor Code sections 510,
15 1194 and all applicable IWC Wage Orders.

16 59. Based on information and belief, Defendants failed to compensate Plaintiffs and
17 Aggrieved Employees for all time spent completing Defendants' required trainings and/or courses
18 (e.g., food safety and/or food handler courses) and/or testing and/or certifications (e.g., food
19 handler certifications).

20 60. Defendants' failure to pay for all time worked by virtue of their time rounding, auto-
21 deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods,
22 and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum
23 wages as well as unpaid overtime wages for those Plaintiffs and Aggrieved Employees who worked
24 more than eight (8) hours in a day and/or more than forty (40) hours in a week. Based on
25 information and belief, Defendants had actual and/or constructive knowledge that their time
26 rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal
27 periods, and/or other off-the-clock work resulted in the underpayment of minimum wages owed to

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1 Plaintiffs and other Aggrieved Employees, in violation of California's minimum and overtime wage
2 laws.

3 61. Based on information and belief, Defendants failed and continue to fail to pay two
4 times Plaintiffs' and Aggrieved Employees' regular rate of pay for time worked beyond twelve (12)
5 hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of
6 work in a work week, in violation of California's overtime laws.

7 62. Based on information and belief, Defendants failed to incorporate all non-
8 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, non-
9 discretionary incentive pay, and/or other non-discretionary pay into the regular rate of pay used to
10 calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
11 wages owed to Plaintiffs and other Aggrieved Employees. Defendants' non-discretionary incentive
12 program provided all employees paid on an hourly basis with incentive compensation when the
13 employees met the various performance goals set by Defendants. When calculating the regular rate
14 of pay in order to pay overtime and meal and rest break premiums, Defendants failed to include
15 the incentive compensation as part of the employees' "regular rate of pay." As a matter of law, such
16 incentive compensation must be included in the "regular rate of pay."

17 **Failure to Provide Meal Periods**

18 63. Under California law, employers have an affirmative obligation to relieve
19 employees of all duty in order to take their first 30-minute, duty-free by the end of their fifth
20 hour of work in a workday, and to allow employees to take their second 30-minute, duty-free
21 meal period by the end of their tenth hour of work. Further, employees are entitled to be paid
22 one hour of additional wages for each workday they were not provided with a required meal
23 period(s).

24 64. Despite these legal requirements, Defendants wrongfully failed to provide
25 Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendants
26 regularly, but not always, required Plaintiffs and the Aggrieved Employees to work in excess of
27 five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal
28 period for every five hours of work, or without compensating Plaintiffs and the Aggrieved

1 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
2 hour of work. Instead, Defendants continued to assert control over Plaintiffs and the Aggrieved
3 Employees by requiring, pressuring, or encouraging them to perform work tasks which could not
4 be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs
5 and the Aggrieved Employees permission to take a meal period. Accordingly, Defendants'
6 policy and practice was not to provide meal periods to Plaintiffs and the Aggrieved Employees in
7 compliance with California law.

8 65. Based on information and belief, Plaintiffs and other Aggrieved Employees were
9 consistently unable to take timely, off-duty, thirty-minute, uninterrupted meal periods, often
10 being forced to take late meal periods, interrupted meal periods, and/or work through part or all
11 of their meal periods due to understaffing, the nature and constraints of their job duties, and/or
12 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
13 periods completely. For example, Plaintiff Molina experienced an interrupted, late or shortened
14 meal period at least twice a week. At times, Plaintiffs were required to clock out for a purported
15 meal period but were required to continue working while off-the-clock. On such days, Plaintiffs
16 took a meal period at a later time when the restaurant was not as busy. Based on information and
17 belief, Plaintiffs were not paid meal premiums for unlawful meal periods.

18 66. For example, based on information and belief, Plaintiffs and Aggrieved
19 Employees were forced to take late meal periods in order to complete assigned job duties. Based
20 on information and belief, Plaintiffs and Aggrieved Employees were at times interrupted during
21 purported meal periods and/or had meal periods cut short and/or restricted to Defendants'
22 premises due to the need to continue assigned job duties.

23 67. Based on information and belief, other Aggrieved Employees were consistently
24 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal
25 periods interrupted, cut short, restricted to Defendants' premises and/or otherwise on duty due to
26 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
27 the need to meet Defendants' goals and expectations.

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1 68. Based on information and belief, Defendants implemented policies and/or
2 practices that failed to relieve Plaintiffs and other Aggrieved Employees of all duties and
3 Defendants' control during unpaid meal periods.

4 69. Based on information and belief, Defendants required Plaintiffs and Aggrieved
5 Employees to complete off-the-clock work prior to their scheduled shift time which Defendants
6 failed to take into account when scheduling meal periods. Based on information and belief, meal
7 periods were late, in part due to unaccounted pre-shift off-the-clock work.

8 70. Based on information and belief, despite Defendants' failure to provide lawful
9 meal periods, Defendants implemented a policy and/or practice of rounding the start and end
10 times of Plaintiffs' and other Aggrieved Employees' meal periods and/or automatically deducting
11 at least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
12 actual and/or constructive knowledge that Plaintiffs and other Aggrieved Employees did not
13 receive lawful meal periods.

14 71. Moreover, based on information and belief, Aggrieved Employees who worked
15 shifts of more than ten (10) hours did not receive a second legally compliant thirty (30) minute
16 meal period. When Plaintiffs worked more than ten (10) and/or twelve (12) hours in a shift, they
17 were not provided with a second meal period.

18 72. Based on information and belief, Defendants failed to instruct Plaintiffs and other
19 Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
20 information and belief, Defendants did not have a compliant written meal period policy, nor did
21 Defendants have any sort of compliant policy in practice.

22 73. Moreover, based on information and belief, Defendants failed to keep accurate
23 records of the true start and end times of Plaintiffs' and Aggrieved Employees' meal periods.
24 Based on information and belief, to the extent meal periods were recorded, Defendants illegally
25 rounded the start and end times of purported meal periods resulting in Plaintiffs and other
26 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
27 periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. Based on information and
28 belief, Defendants had actual and/or constructive knowledge that their policies and practices

1 resulted in the denial of uninterrupted meal periods which were free of Defendants' control owed
2 to Plaintiffs and other Aggrieved Employees, in violation of California's meal period laws.

3 74. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of
4 additional wages for each workday he or she was not provided with a required meal period(s).
5 Defendants, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional
6 wages to which they were entitled for meal periods that were not provided. Defendants either failed
7 to pay a meal period premium at all for each workday a lawful meal period was not provided and/or
8 failed to pay the proper meal period premium for failure to incorporate all non-discretionary
9 remuneration, including but not limited to, bonuses, shift differential pay and/or other non-
10 discretionary compensation into the regular rate of compensation for purposes of calculating the
11 owed meal period premium.

12 **Failure to Authorize and Permit Rest Periods**

13 75. Employers are required by California law to authorize and permit breaks of ten
14 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
15 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the
16 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself
17 a violation of California's rest break laws.

18 76. Throughout the statutory period, Defendants have wrongfully failed to authorize
19 and permit Plaintiffs and the Aggrieved Employees to take legally compliant rest periods.
20 Defendants regularly required Plaintiffs and the Aggrieved Employees to work in excess of four
21 consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
22 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours),
23 or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not
24 authorized or permitted. Instead, Defendants continued to assert control over Plaintiffs and the
25 Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which
26 could not be completed without working in lieu of taking mandatory rest periods, or by denying
27 Plaintiffs and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants'

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1 policy and practice was to not authorize and permit Plaintiffs and the Aggrieved Employees to take
2 rest periods in compliance with California law.

3 77. Plaintiffs and other Aggrieved Employees were not adequately informed,
4 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
5 law. Based on information and belief, Defendants had no policy in place nor instruction as to the
6 taking of duty-free rest periods. Based on information and belief, Defendants did not have a
7 compliant written rest period policy, nor did Defendants have any sort of compliant rest period
8 policy in practice.

9 78. Based on information and belief, Aggrieved Employees' rest periods were
10 interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature
11 and constraints of their job duties, and/or due to commentary from supervisors/managers
12 pressuring them to skip rest periods completely or otherwise take non-compliant rest periods. For
13 example, Plaintiff Molina was rarely afforded the opportunity to take a lawful rest period or any
14 rest period at all. Plaintiffs were regularly denied the opportunity to take timely, duty-free rest
15 periods. Additionally, Defendants' policy restricted Plaintiffs and the Aggrieved Employees from
16 unconstrained walks based on Defendants' rule stating that Plaintiffs and the Aggrieved Employees
17 cannot leave the work premises during their rest period.

18 79. Moreover, based on information and belief, Defendants failed to provide any form
19 of a third rest period on shifts lasting longer than ten hours.

20 80. Based on information and belief, Defendants implemented policies and/or practices
21 that failed to relieve Plaintiffs and other Aggrieved Employees of all duties and Defendants' control
22 during rest periods. Based on information and belief, Aggrieved Employees were pressured to
23 complete their work duties according to a designated schedule such that rest periods were only
24 taken once tasks were completed, and/or as time permitted.

25 81. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of
26 additional wages for each workday he or she was not authorized and permitted to take all
27 required rest periods. Defendants, however, regularly failed to pay Plaintiffs and the Aggrieved
28 Employees the additional wages to which they were entitled for rest periods that they were not

1 authorized and permitted to take. Defendants either failed to pay a rest period premium at all for
2 each workday a proper rest period was not provided and/or failed to pay the proper rest period
3 premium for failure to incorporate all non-discretionary remuneration, including but not limited
4 to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular
5 rate of compensation for purposes of calculating the owed rest period premium.

6 **Failure to Pay All Earned Wages Twice Per Month**

7 82. Based on Defendants' failure to pay Plaintiffs and the Aggrieved Employees for
8 all wages as discussed above, Defendants also violated Labor Code § 204.

9 83. Labor Code § 204 requires employers to pay employees all earned wages two
10 times per month. Throughout the statutory period, employees were entitled to be paid twice a
11 month at their regular rates, including all meal period premium wages owed, rest period premium
12 wages owed, and wages owed for overtime hours worked. However, during all such times,
13 Defendants systematically failed and refused to pay the employees all wages due, and failed to
14 pay those wages twice a month, in that employees were not paid all wages for all meal periods
15 not provided by Defendants, all wages for all rest periods not authorized and permitted by
16 Defendants, and all wages for all hours worked. As a result, Defendants owe employees the
17 legally required wages not paid, and Plaintiffs and the Aggrieved Employees suffered damages in
18 those amounts.

19 84. Based on information and belief, Defendants further failed to incorporate all non-
20 discretionary compensation, including but not limited to, non-discretionary bonus compensation,
21 shift differentials, and/or other non-discretionary compensation into the regular rate of pay used
22 to calculate overtime. Failing to include non-discretionary compensation into the regular rate of
23 pay resulted in a miscalculation of the overtime wage rate and the underpayment of overtime
24 wages owed to Plaintiffs and other Aggrieved Employees, resulting in additional violations of
25 Labor Code § 204.

26 **Refusal to Make Payment**

27 85. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
28 and payable and/or the denial of the validity of any claim to wages due. Defendants violated and

1 continue to violate Labor Code section 216 by failing to pay Plaintiffs and all Aggrieved
2 Employees for all hours worked at the proper wage rate and by failing to pay Plaintiffs and all
3 Aggrieved Employees an additional hour of pay for each meal and/or rest period not provided or
4 that was otherwise invalid. Gould v. Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th
5 1137, 1154–1155. These violations subject Defendants to civil penalties under Labor Code
6 section 225.5.

7 **Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

8 86. Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to
9 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
10 fails to maintain accurate and complete records required by California Labor Code § 1174 is
11 subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
12 employer shall keep time records showing when the employee begins and ends each work period.
13 Meal periods and total hours worked daily shall also be recorded.

14 87. Defendants, however, failed to maintain accurate records of hours worked and all
15 meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

16 88. Defendants' failure to provide and maintain records required by the California
17 Labor Code and IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability
18 to know, understand and question the accuracy and frequency of meal periods, and the accuracy
19 of their hours worked stated in Defendants' records. Therefore, Plaintiffs and the Aggrieved
20 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
21 unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved
22 Employees have suffered and continue to suffer, substantial losses related to the use and
23 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
24 to compel Defendants to fully perform its obligation under state law, all to their respective
25 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to
26 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and the
27 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
28 understanding, and disputing the wage payments paid to them.

1 89. Defendants have failed and continue to fail to keep accurate and complete records
2 showing total hours worked by virtue of Defendants' time rounding, automatic meal period
3 deductions, failure to relieve Plaintiffs and Aggrieved Employees of all duties and employer
4 control during unpaid meal periods, failure to record the true start and end times of meal periods,
5 shift start times and shift end times, and other off-the-clock work policies and practices described
6 herein.

7 **Failure to Produce Employment Records**

8 90. Based on information and belief, Defendants have a uniform policy and practice of
9 failing to produce or make available a current or former employee's time, pay, and/or personnel
10 records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable
11 Wage Order. For example, Plaintiff Molina sent a request for payroll and personnel records to
12 Defendants on March 14, 2022, and again on April 18, 2022. Yet, Defendants failed to produce
13 any records at all within the time periods delineated by California labor law. Based on information
14 and belief, Defendants failed and continue to fail to timely produce complete time, pay, and
15 personnel records when requested by other Aggrieved Employees.

16 91. Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that
17 employers keep the following information on file for each employee for a minimum of three years:
18 the employee's dates of employment; the employee's hourly rates and the corresponding number
19 of hours worked by the employee at each hourly rate, when the employee begins and ends each
20 work period (including meal periods) and split intervals; total hours worked by the employee; all
21 deductions; gross wages earned; and net wages earned. Section (b) of Labor Code section 226
22 further requires employers to "afford current and former employees the right to inspect or receive
23 a copy of records pertaining to their employment upon reasonable request to the employer." Section
24 (c) of Labor Code section 226 provides that compliance must occur "no later than 21 calendar days
25 from the date of the request." An employer's failure to comply entitles a current or former employee
26 to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

27 92. In addition to their right to time and pay records, employees, and their
28 representatives, have the right to inspect and receive a copy of their personnel files pursuant to

1 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
2 section 432 further specifies that employers must furnish copies of all employment records bearing
3 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
4 for inspection or receipt "not later than 30 calendar days from the date the employer receives a
5 written request." An employer's failure to comply likewise entitles a current or former employee
6 to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section
7 1198.5(k). These violations subject Defendants to penalties under Labor Code sections 226,
8 1198.5, and 2699.

9 **Failure to Timely Pay All Wages at Termination**

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

16 94. Within the applicable statute of limitations, the employment of Plaintiffs and
17 many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged,
18 and the employment of others will be terminated. However, during the relevant time period,
19 Defendants failed, and continue to fail to pay Plaintiffs and terminated Aggrieved Employees,
20 without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at
21 the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment.
22 These unpaid wages include wages for unpaid work time (including minimum, straight time, and
23 overtime wages), missed meal period premium wages, and missed rest period premium wages.

24 95. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
25 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
26 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
27 at the same rate until paid or until an action is commenced; but the wages shall not continue for
28 more than thirty (30) days.

1 96. Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from
2 Defendants their additionally accruing wages for each day they were not paid, at their regular
3 hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

4 97. Moreover, final paychecks, once provided to Plaintiffs and Aggrieved Employees,
5 did not include all wages owed as they were devoid of, including but not limited to, all owed
6 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
7 paid time off wages at the properly accrued rates.

8 98. Based on further information and belief, at times, Plaintiffs and Aggrieved
9 Employees experienced breaks in employment caused by Defendants whereby they would not be
10 called in for work for longer than a single pay period due to Defendants' lack of work or lack of
11 assignments. Such instances qualify as a discharge of employment. Yet, Defendants failed to
12 timely pay all owed wages at the end of such periods of employment, in violation of Labor Code
13 sections 201–202.

14 99. For example, Defendants did not furnish Plaintiff Aparicio with any final
15 paycheck for at least approximately two (2) days following Plaintiff Aparicio's termination, and
16 the late final paycheck was devoid of all wages owed, including without limitation, all owed
17 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
18 paid time off wages at the properly accrued rates.

19 **Failure to Furnish Accurate Itemized Wage Statements**

20 100. Labor Code § 226(a) provides that every employer shall furnish each of his or her
21 employees an accurate itemized wage statement in writing showing nine pieces of information,
22 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
24 (4) all deductions, provided that all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
26 which the employee is paid, (7) the name of the employee and the last four digits of his or her
27 social security number or an employee identification number other than a social security number,
28 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly

1 rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee. An employee is presumed to suffer an injury if this information is
3 missing. (Labor Code § 226(e)(2)(B)(iii).)

4 101. The statute further provides: “An employee suffering injury as a result of a
5 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
6 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
7 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
8 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled
9 to an award of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

10 102. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the
11 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
12 rates, and all gross and net wages earned (including correct hours worked, correct wages for meal
13 periods that were not provided in accordance with California law, and correct wages for rest
14 periods that were not authorized and permitted to take in accordance with California law). In
15 addition, Defendants issued wage statements to Plaintiffs and Aggrieved Employees that failed to
16 indicate the earned gross and net wages during the pay period, the correct applicable rates of pay
17 for all hours worked, and the total hours worked (by virtue of rounded time entries, automatic
18 deduction for meal periods/failure to relieve Plaintiffs and Aggrieved Employees of all duties and
19 employer control during unpaid meal periods, payment according to scheduled hours worked
20 rather than actual hours worked, and/or other off-the-clock work policies and practices), which
21 results in a violation of Labor Code section 226(a).

22 103. Based on information and belief, Defendants also failed to incorporate all forms of
23 non-discretionary compensation earned during the pay period into the overtime pay rate
24 calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime
25 worked by Plaintiffs and other Aggrieved Employees.

26 104. Moreover, based on information and belief, Defendants issued wage statements to
27 Plaintiffs and Aggrieved Employees that further violate Labor Code section 226(a), by among
28 other things, failing to list the correct name and/or address of the legal entity that is the employer.

1 As a result, Plaintiffs and Aggrieved Employees suffered injury as they could not contact their
2 employer regarding any questions they had about wages paid.

3 105. Based on information and belief, Defendants issued wage statements to Plaintiffs
4 and Aggrieved Employees that failed to list the inclusive dates of the pay period for which they
5 are being paid. For example, at times, Defendants issued wage statements containing retroactive
6 pay without including the inclusive dates of the accurate pay period for that retroactive pay, and
7 further failing to list the total hours worked for the pay period the retroactive pay corresponds
8 with, in violation of Labor Code sections 226(a)(2) and/or 226(a)(6).

9 106. Defendants' failure to accurately list all hours worked on all wage statements
10 caused confusion to Plaintiffs and Aggrieved Employees over whether they received all wages
11 owed. The absence of accurate information on their wage statements has prevented earlier
12 challenges to Defendants' unlawful pay practices, will require discovery and mathematical
13 computations to determine the amount of wages owed, and will cause difficulty and expense in
14 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
15 inaccurate information about wages and amounts deducted from wages to state and federal
16 government agencies.

17 107. Because Defendants violated Labor Code § 226, Plaintiffs and similarly
18 Aggrieved Employees suffered injury and damage to their statutorily protected rights.
19 Accordingly, Plaintiffs and similarly Aggrieved Employees are entitled to recover from
20 Defendants the greater of their actual damages caused by Defendants' failure to comply with
21 Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000)
22 dollars per employee.

23 **Failure to Indemnify for Necessary Expenditures**

24 108. Labor Code § 2802(a) provides that employers shall indemnify his or her
25 employees for all necessary business expenditures or losses that have been incurred by the
26 employees in direct discharge of his or her duties. Throughout the statute of limitations period
27 applicable to this cause of action, Defendants wrongfully required Plaintiffs and the Aggrieved
28 Employees to pay expenses that they incurred in direct discharge of their duties for Defendants.

1 Plaintiffs and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-
2 related expenses in the form of work attire. Plaintiffs and the Aggrieved Employees incurred
3 substantial expenses as a direct result of performing their job duties for Defendants, but
4 Defendants failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-
5 related expenses.

6 109. Based on information and belief, Defendants shifted the costs of doing business
7 onto Plaintiffs and Aggrieved Employees by requiring them to pay for business expenses,
8 including but not limited to, uniforms and/or the use of Plaintiffs' and Aggrieved Employees'
9 personal mobile phones and data usage for work-related purposes including but not limited to
10 receiving and responding to work-related messages and/or phone calls. For example, Plaintiffs
11 regularly received work-related calls to their personal cell phones. At least once or twice per pay
12 period, Plaintiffs received work-related calls regarding a work schedule change and/or the need
13 to cover another employee's shift. Moreover, Plaintiffs and Aggrieved Employees were required
14 to purchase and maintain work uniforms including but not limited to a white polo shirt with
15 Defendants' logo, and a black apron which Defendants required them to wear during work hours.
16 Defendants only provided one apron to each Aggrieved Employee. Due to regular use, and wear
17 and tear, Plaintiffs and Aggrieved Employees were required to supply additional aprons.

18 110. Based on information and belief, at times, Defendants required Plaintiffs and
19 Aggrieved Employees to use their personal vehicle(s) for work without reimbursing them for the
20 personal vehicle expenses incurred in connection therewith, including but not limited to, travel
21 between Defendants' facilities/restaurants to carry out assigned job duties.

22 111. Based on information and belief, Defendants regularly failed to reimburse and
23 indemnify Plaintiffs and Aggrieved Employees for business expenses. Pursuant to California Labor
24 Code section 2802, Plaintiffs and Aggrieved Employees are entitled to be fully reimbursed for all
25 reasonable expenses associated with carrying out Defendants' orders and/or carrying out the duties
26 assigned by Defendants. Defendants' failure to provide Plaintiffs and the Aggrieved Employees
27 with full reimbursement for all reasonable expenses associated with carrying out their duties

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1 required that Plaintiffs and the Aggrieved Employees subsidize and/or carry the burden of business
2 expenses in violation of Labor Code section 2802.

3 **Sick Leave Violations**

4 112. Throughout the relevant time period, Defendants failed to provide proper paid sick
5 leave to Plaintiffs and other Aggrieved Employees. Defendants violated California's paid sick leave
6 laws including Labor Code sections 245–248.5 and 233–234. Defendants either failed to provide
7 paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay
8 owed to Plaintiffs and other Aggrieved Employees by failing to base the accrued sick leave hours
9 on the correct number of hours worked (as a result of the rounding/automatic deduction policies
10 and practices for meal periods and/or shift start and end times/other required off-the-clock work)
11 and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration,
12 including but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-
13 discretionary compensation into the sick leave pay rate calculation.

14 113. Upon information and belief, Defendants further failed to place Plaintiffs and
15 Aggrieved Employees on notice of their paid sick leave rights, or thereby putting their entitlement
16 to sick leave in a Labor Code section 2810.5 notice. Based on information and belief, Defendants
17 failed to provide notice of the correct sick leave amount balance available to Plaintiffs and other
18 Aggrieved Employees on their wage statements or other written statement. Moreover, based on
19 information and belief, Defendants failed to maintain accurate records of used sick leave and the
20 balance of paid sick leave.

21 114. But for this failure, Plaintiffs and all Aggrieved Employees would have used their
22 paid sick leave at least prior to their respective separations, for as on several occasions thereafter,
23 they would have been entitled to use the banked sick leave and earn appropriate compensation. In
24 violation of Labor Code section 247.5, Defendants failed to maintain records documenting the
25 hours worked and paid sick days accrued and used by Plaintiffs and all Aggrieved Employees,
26 permitting the presumption that Plaintiffs and all Aggrieved Employees were entitled to the
27 maximum number of hours accruable.

28 ///

1 115. Upon information and belief, Defendants failed and continue to fail to comply with
2 Labor Code section 246, by failing to provide Plaintiffs and all Aggrieved Employees with a Labor
3 Code section 226 wage statement, or separate writing containing the amount of paid sick leave
4 available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
5 wages. These practices violated California's sick leave laws, Labor Code section 245, et seq.
6 Accordingly, Plaintiffs seek all appropriate relief under the PAGA, the aforementioned code
7 provisions including but not limited to Labor Code sections 233 and 234, and seek injunctive relief,
8 attorney's fees, declaratory relief, and penalties as permitted by law.

9 **Failure to Provide Supplemental Paid Sick Leave**

10 116. Labor Code § 248.2 provides that all employers with 26 or more employees are
11 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
12 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
13 Based on information and belief, Defendants violated Labor Code § 248.2 by not providing
14 Plaintiffs and other Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick
15 Leave. Based on information and belief, Defendants failed to provide Supplemental Paid Sick
16 Leave in 2022 in violation of Labor Code section 248.6.

17 **Failure to Provide Suitable Resting Facilities**

18 117. Defendants' restaurants/locations are generally similar in layout and design, and
19 there was, and continues to be, space that allows for a resting facility that employees may use to
20 cease work and recover during meal or rest periods. Defendants could have provided Plaintiffs and
21 Aggrieved Employees with a resting facility within the restaurant with reasonable or no
22 modification. Based on information and belief, Defendants denied and continue to deny employees
23 with suitable areas to rest (e.g., a breakroom). As a result, Plaintiffs and other Aggrieved
24 Employees were forced to adjust to areas not conducive to resting, including but not limited to
25 leaning up against the wall, or search for facilities outside of the restaurant which are not
26 designated or reserved for employees' rest, such as a personal vehicle.

27 118. Defendants did not provide Plaintiffs and other Aggrieved Employees with suitable
28 resting facilities during their hours of work, particularly during meal and/or rest periods. Moreover,

Defendants did not inform Plaintiffs and other Aggrieved Employees of their rights to suitable resting facilities under California law. Such practices are in violation of section 13 of the applicable Wage Order and California Labor Code section 1198.

Violation of Labor Code §§ 351 and 353 — Gratuity Violations

119. Labor Code Section 351 prohibits employers and their agents from sharing in or keeping any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities received.

120. Based on information and belief, Defendants failed to ensure that Plaintiffs and Aggrieved Employees fully received the gratuities left for them by patrons, in that Defendants and their agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, Defendants also failed to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, Defendants failed to pay gratuities paid by customers using credit cards to Plaintiffs and Aggrieved Employees by the next regular payday following the credit card payment, in violation of Labor Code section 351.

121. Based on information and belief, Defendants charged an additional service charge to their customers/patrons. Based on information and belief, customers are led to believe that the service charge will be paid to Plaintiffs and Aggrieved Employees. Instead, Defendants keep a majority (if not the entirety) of the service charge, thereby depriving Plaintiffs and Aggrieved Employees of the service charge/gratuity that is left by the patron/customer. See *O'Grady v. Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended for the employees providing the service).

Unlawful Deductions

122. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief, Defendants made unlawful deductions from Plaintiffs' and Aggrieved

1 Employees' paychecks during the relevant period, including without limitation, deducting business
2 costs and/or deducting wages for purported overpayments from previous pay periods and/or
3 unlawfully deducting wages for negligently damaged property and/or unlawfully deducting
4 transaction fees/pay/money card fees and/or deducting costs advanced by Defendants. Such
5 practices are in violation of including but not limited to Labor Code Sections 221–222, which
6 subjects Defendants to civil penalties under Labor Code Section 2699.

7 **Reporting Time Pay Violations**

8 123. Section 5 of all applicable IWC Wage Orders provides that each workday an
9 employee is required to report for work and does report, but is not put to work or is furnished less
10 than half said employee's usual or scheduled day's work, the employee shall be paid for half the
11 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
12 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. If an
13 employee is required to report for work a second time in any one workday and is furnished less
14 than two (2) hours of work on the second reporting, said employee shall be paid for two hours at
15 the employee's regular rate of pay, which shall not be less than the minimum wage.

16 124. Plaintiffs and Aggrieved Employees were not paid reporting time wages in
17 accordance with California law, including but not limited to the applicable IWC Wage Order. For
18 example, based on information and belief, at times, Plaintiffs and Aggrieved Employees reported
19 to work for a scheduled shift but were sent home and/or were not put to work and were not paid
20 all owed reporting time pay wages in accordance with California law. Based on information and
21 belief, Defendants have a policy and practice of failing to pay all reporting time wages to
22 employees, including Plaintiffs and Aggrieved Employees, in violation of California law, including
23 but not limited to, the applicable IWC Wage Order, Section 5, and the California Labor Code,
24 including but not limited to section 1198.

25 **Failure to Pay Vested Vacation/Paid Time Off**

26 125. California Labor Code section 227.3 provides that when an employer policy
27 provides for paid vacations and/or paid time off, and an employee is terminated without having
28 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee

1 as wages at the employee's final rate in accordance with such contract of employment or employer
2 policy respecting eligibility or time served, and that there shall be no forfeiture of vested vacation
3 time or paid time off upon termination.

4 126. Based on information and belief, Defendants had and continue to have a uniform
5 policy and practice of failing to allow Plaintiffs and Aggrieved Employees to use their earned
6 vacation/paid time off during employment and failing to pay all vested, accrued paid time off
7 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including
8 non-discretionary compensation, including but not limited to, shift differentials) to Plaintiffs and
9 Aggrieved Employees upon separation of employment, in violation of California law, including
10 but not limited to, Labor Code section 227.3.

11 **Violation of Labor Code Section 208**

12 127. Labor Code Section 208 provides: Every employee who is discharged shall be paid
13 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
14 employer in the county where the employee has been performing labor. All payments shall be made
15 in the manner provided by law. Based on information and belief, Defendants have a policy and
16 practice of failing to provide employees who are terminated, including Plaintiffs and Aggrieved
17 Employees, with their final paycheck(s) at the place of discharge and/or failing to provide Plaintiffs
18 and Aggrieved Employees with their final paycheck(s) at the office or agency of Defendants in the
19 county where the work was performed, in violation of Labor Code Section 208.

20 **Seating Violations**

21 128. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
22 provided with suitable seats when the nature of the work reasonably permits the use of seats and
23 when they are not actively engaged in work duties that would not permit them to be seated. Suitable
24 seating is one of the worker protections covered by California's Wage Orders, which have the same
25 dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of
26 protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53
27 Cal.4th 1004, 1027 (2012).

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1 129. Based on information and belief, Defendants failed to provide Aggrieved
2 Employees with suitable seating, and when such employees were not engaged in duties which
3 required them to stand, no seating was placed in reasonable proximity to their workstation(s).
4 Based on information and belief, the nature of the work reasonably permitted the use of seats for
5 at least part of the time that Aggrieved Employees were working. However, Defendants failed to
6 provide suitable seating in reasonable proximity to Aggrieved Employees' work area(s) in violation
7 of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199,
8 subjecting Defendants to civil penalties under Labor Code sections 1199 and 2699.

9 **Unlawful Agreements and Unlawful Criminal History Inquiries**

10 130. **Unlawful Agreements.** Labor Code section 432.5 provides that "no employer . . .
11 shall require any employee or applicant for employment to agree, in writing, to any term or
12 condition which is known by such employer . . . to be prohibited by law." Based on information
13 and belief, Defendants required and continue to require Plaintiffs and Aggrieved Employees to
14 agree in writing to unlawful conditions of employment including but not limited to unlawful non-
15 solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements,
16 unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers,
17 unlawful forum selection clauses and/or choice of law provisions/agreements, and/or unlawful
18 criminal and/or financial checks as a condition of obtaining and/or continuing employment, in
19 violation of Labor Code section 432.5.

20 131. Labor Code section 432.6(a) provides that "a person shall not, as a condition of
21 employment, continued employment, or the receipt of any employment-related benefit, require any
22 applicant for employment or any employee to waive any right" Based on information and
23 belief, Defendants required Plaintiffs and Aggrieved Employees to sign meal period waiver(s) that
24 were universally signed as a condition of employment, including but not limited to, during the
25 onboarding process. By requiring Plaintiffs and Aggrieved Employees to sign unlawful meal
26 period waivers as a condition of obtaining and/or maintaining employment, Defendants violated
27 Labor Code sections 432.5 and 432.6.

28 ///

1 132. The California Labor Code places certain procedural and substantive limits on an
2 employer's ability to conduct employee background checks and on how employers can use the
3 information they obtain through those background checks. Labor Code section 1024.5 states that
4 employers, except for financial institutions, may order a credit check only if the individual works
5 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
6 positions, and certain government positions). Additionally, the Investigative Consumer Reporting
7 Agencies Act (ICRAA—CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act
8 (FCRA—15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an
9 employee background check, including but not limited to identifying an appropriate reason for the
10 background check, a separate consent form with required disclosures and certain formatting
11 requirements, additional forms such as a summary of rights, a way by which to request a copy of
12 the report, as well as proper notice of adverse actions taken, among other statutory requirements.

13 133. Based on information and belief, Defendants ordered unlawful financial credit
14 checks on Plaintiffs and Aggrieved Employees, in violation of Labor Code section 1024.5, and
15 required Plaintiffs and Aggrieved Employees to provide ongoing written consent to the unlawful
16 credit checks as a condition of employment, in violation of California and Federal law, resulting
17 in a violation of Labor Code section 432.5. Based on information and belief, Defendants required
18 Plaintiffs and Aggrieved Employees to submit and/or agree to submit in writing to unlawful
19 criminal background checks as a condition of obtaining and/or holding employment in violation of
20 the ICRAA and the FCRA. Based on further information and belief, Defendants required Plaintiffs
21 and Aggrieved Employees to agree in writing to provide Defendants with ongoing consent to
22 conduct background checks throughout the duration of employment, in violation of the ICRAA
23 and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section
24 432.5. Based on further information and belief, Defendants knew that requiring Plaintiffs and
25 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
26 condition of obtaining and/or holding employment was unlawful. By requiring that Plaintiffs and
27 Aggrieved Employees sign off on the illegal background and/or financial checks, Defendants
28 violated Labor Code section 432.5.

1 134. **Unlawful Inquiries into Criminal History.** Labor Code section 432.7 prohibits an
2 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
3 then, certain limitations apply. Based on information and belief, Defendants asked Plaintiffs and
4 Aggrieved Employees about arrests not resulting in convictions on their employment application,
5 in violation of California law. Upon information and belief, Defendants, in violation of California
6 law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing
7 Act ("FEHA"), asked Plaintiffs and Aggrieved Employees about convictions prior to extending an
8 offer of employment and/or otherwise impermissibly inquired into criminal history on their
9 employment application in violation of California law, and in violation of Labor Code section
10 432.5. By asking about arrests not resulting in convictions, Defendants violated Labor Code section
11 432.7. By asking about convictions at the application phase or prior to extending an employment
12 offer, Defendants violated California's Fair Chance Act, and thereby violated Labor Code section
13 432.5.

14 **Unlawful PAGA Waiver**

15 135. Additionally, Defendants violated Labor Code section 432.5 by requiring Plaintiffs
16 and Aggrieved Employees to agree in writing to other unlawful agreements, including but not
17 limited to, an unlawful waiver of PAGA and/or representative actions as a condition of
18 employment. An action pursuant to PAGA "... is a representative action on behalf of the state."
19 *Kim v. Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86–87. It is well settled that agreements
20 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
21 unenforceable. See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384.
22 Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an
23 aggrieved employee's individual PAGA claim because there is no such thing as an individual
24 PAGA claim. *Kim v. Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86–87 ("There is no
25 individual component to a PAGA action because 'every PAGA action . . . is a representative action
26 on behalf of the state.'"). Upon information and belief, Defendants required Plaintiffs and
27 Aggrieved Employees to agree in writing to waive their right to a trial of PAGA claims in violation
28 of California law. By requiring Plaintiffs and Aggrieved Employees to agree, in writing, to an

1 unlawful PAGA waiver, Defendants required written agreement to an unlawful provision as a
2 condition of employment which is a violation of Labor Code section 432.5.

3 **FIRST CAUSE OF ACTION**

4 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
5 **2004, Cal. Lab. Code § 2698 et seq.)**

6 136. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as
7 though fully set forth herein.

8 137. At all times herein mentioned, Defendants were subject to the Labor Code of the
9 State of California and the applicable IWC Orders.

10 138. California Labor Code § 2699(a) specifically provides for a private right of action
11 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
12 law, any provision of this code that provides for a civil penalty to be assessed and collected by
13 the Labor and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
15 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and other current or former employees pursuant to the procedures specified in Section
17 2699.3.”

18 139. Each Plaintiff has exhausted their respective administrative remedies pursuant to
19 California Labor Code § 2699.3, as set forth above. These penalties include, but are not limited
20 to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

21 140. Based on the conduct described in this Complaint, Plaintiffs are entitled to an
22 award of civil penalties on behalf of the State of California and similarly Aggrieved Employees
23 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
24 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

25 141. Under the provisions of PAGA and the above-mentioned Labor Code sections,
26 including but not limited to Labor Code sections 201–203, 204, 208, 210, 216, 221–223, 225.5,
27 226, 226.7, 227.3, 245–248.6, 256, 351, 353, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1,
28 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 2699, 2699.3, 2802,

2810.5 and all applicable Wage Orders as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are liable for the following penalties: (a) All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute, pursuant to Labor Code section 2699(a); and (b) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).

142. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiffs, on behalf of all similarly aggrieved employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing to indemnify for necessary business expenditures; failing to pay proper sick leave wages; failing to provide supplemental paid sick leave; failing to provide suitable resting facilities; failing to pay all gratuities earned by employees; making unlawful wage deductions; failure to produce records; failing to pay reporting time wages; failing to pay vested vacation/paid time off; failing to pay split shift premiums; failing to pay wages at the proper place of discharge; failure to provide wage notice under Labor Code section 2810.5; requiring employees to agree to unlawful conditions of employment; requiring employees to agree to unlawful criminal history inquiries; and requiring employees to agree to an unlawful PAGA waiver;

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- 1 2. An award of civil penalties on behalf of themselves and all similarly aggrieved
2 employees pursuant to PAGA;
3 3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4 4. Attorneys' fees and costs reasonably incurred;
5 5. Injunctive and declaratory relief to the extent allowed by PAGA; and\
6 6. Such other and further relief that the Court deems proper;
7

8 Respectfully submitted,

9 Dated: August 19, 2026

WILSHIRE LAW FIRM

10
11 By: 

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Daniel J. Kramer
Chase M. Stern

12
13 Attorneys for Plaintiffs

14 **CROSNER LEGAL, PC**

15
16 By: 

Jamie K. Serb
Matthew E. Crawford

PROOF OF SERVICE

Erika Lizeth Merino Alejandro v. Santa Eastvale, Inc. dba Panini Kabob Grill
CIVSB2202254

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 660 S. Figueroa St., Sky Lobby, Los Angeles, California 90017; and my electronic service address is rebecca.padilla@wilshirelawfirm.com.

On August 19, 2026, I served the foregoing **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

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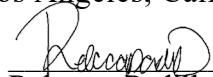
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Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on August 19, 2026, at Los Angeles, California


Rebecca Padilla