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10 Attorneys for Plaintiff,
11 MARTHA P. BRIANO MARTINEZ, and all others similarly situated
12 (Additional attorney for Plaintiff on the following page)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA
(UNLIMITED JURISDICTION)

MARTHA P. BRIANO MARTINEZ, on behalf
of herself and all others similarly situated, and
as an “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

NOR CAL FOODS, LLC, a California limited
liability company; and DOES 1–50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
5/27/2022 3:23 PM
By: Griselda Zavala, Deputy Clerk

Case No.: SCV-270596

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, Martha P. Briano Martinez (hereafter “Plaintiff”), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Nor Cal Foods,
7 LLC, a California limited liability company, and Does 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
11 relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages, including minimum, regular, overtime and doubletime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Issue only accurate and complete itemized wage statements;

19 (G) Timely pay wages upon termination of employment;

20 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
21 restitution, statutory penalties, civil penalties, attorneys’ fees, costs, and related relief through this
22 class and representative action.

23 **THE PARTIES**

24 3. Plaintiff Martha P. Briano Martinez is a resident of California.

25 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
26 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
27 Labor Code § 2699 (c).

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5. Defendant Nor Cal Foods, LLC is a California limited liability company and existing under the laws of California and also a citizen of California based on Plaintiff's information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

7. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class Members or otherwise complying with their rights in accordance with applicable California labor laws as alleged herein.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

CLASS ALLEGATIONS

10. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as



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1 a class action.

2 11. **Class Definition:** The Class is defined as follows: All persons Defendants
3 employed in California all hourly, non-exempt employees, including, but not limited to, cooks,
4 servers, food preparers, cashiers, busboys, individuals performing work comparable to the
5 aforementioned, compensated comparably to the aforementioned, and individuals in similar
6 positions, at any time during the period beginning four years prior to the filing of this action and
7 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

8 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
9 right to amend or modify the class definition with greater specificity, by further division
10 into subclasses and/or by limitation to particular issues.

11 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
12 each individual Class Member is impractical. While Plaintiff does not currently know the exact
13 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
14 minimum required for numerosity under California laws.

15 14. **Commonality and Predominance:** Common questions of law and fact exist as to
16 all Class Members and predominate over any questions which affect only individual Class
17 Members. These questions include, but are not limited to:

18 A. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
20 premium, and rest period premium;

21 B. Whether Defendants failed to provide the Class Members with all meal
22 periods in compliance with California law;

23 C. Whether Defendants failed to authorize and permit the Class Members to
24 take all rest periods in compliance with California law;

25 D. Whether Defendants knowingly and intentionally failed to provide the
26 class with accurate and complete itemized wage statements;

27 E. Whether Defendants willfully failed to provide the class with timely final
28 wages;



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1 F. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code sections 17200, et seq., with respect to the Class; and

3 G. Whether Class Members are entitled to restitution of money or property
4 that Defendants may have acquired from them through alleged Labor Code violations.

5 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
6 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
7 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
8 Code, the Wage Order, and the Business and Professions Code.

9 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
10 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
11 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
12 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members.

14 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
15 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
16 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
17 Plaintiff and absent Class Members.

18 18. **Superiority:** A class action is vastly superior to other available means for fair and
19 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
20 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
21 and efficiently prosecute their common claims in a single forum without the unnecessary
22 duplication of effort and expense that numerous individual actions would entail. In addition, the
23 monetary amounts due to many individual Class Members are likely to be relatively small and
24 would thus make it difficult, if not impossible, for individual Class Members to both seek and
25 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
26 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
27 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

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1 **STATEMENT OF FACTS**

2 19. The Wage Order applies to “all persons employed in the public housekeeping
3 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
4 Wage Order defines "Public Housekeeping Industry" to mean

5 any industry, business, or establishment which provides meals, housing, or
6 maintenance services whether operated as a primary business or when incidental
7 to other operations in an establishment not covered by an industry order of the
8 Commission, and includes, but is not limited to the following:

- 9 (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters,
10 cafeterias, boarding houses, clubs, and all similar establishments where
11 food in either sold or liquid form is prepared and served to be consumed
12 on the premises;
- 13 (2) Catering, banquet, box lunch service, and similar establishments which
14 prepare food for consumption on or off the premises;
- 15 (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer
16 parks, office or loft buildings, and similar establishments offering rental
17 of living, business, or commercial quarters;
- 18 (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions,
19 homes for the aged, and similar establishments offering board or lodging
20 in addition to medical, surgical, nursing, convalescent, aged, or child care;
- 21 (5) Private schools, colleges, or universities, and similar establishments which
22 provide board or lodging in additional to educational facilities;
- 23 (6) Establishments contracting for development, maintenance or cleaning of
24 grounds; maintenance or cleaning of facilities and/or quarters of
25 commercial units and living units; and
- 26 (7) Establishments providing veterinary or other animal care services.

27 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
28 Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants
operated, and Plaintiff, and all of the Class Members, worked for one or more restaurants.
Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage
Order provides.

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1 20. On approximately October 2, 2020, the Defendants began to employ Plaintiff in
2 Santa Rosa in the position of hourly, non-exempt cook. The Defendants continuously employed
3 her in that capacity until on or about July 5, 2021, when her employment ended.

4 21. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
5 Class Members on a bi-weekly basis and paid them by the hour. At all relevant times, the
6 Defendants classified Plaintiff and all of the other Class Members as non-exempt employees
7 entitled to the protections of the Labor Code and the Wage Order.

8 22. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
9 other Class Members for all hours worked at the applicable minimum or regular rates of pay.
10 Defendants failed to pay Plaintiff and the other Class Members for all hours worked by altering
11 time records to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff
12 and the other Class Members based on these artificially reduced hours. Defendant also failed to
13 pay Plaintiff and the other Class Members for all hours worked because Employer did not pay
14 Plaintiff and the other Class Members for at least the first week of work.

15 23. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
16 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
17 in a week, and for the first eight hours of the seventh day of the workweek. Defendant failed to
18 pay Plaintiff and the other Class Members for all overtime hours worked by altering time records
19 to artificially reduce the time Plaintiff worked. Defendants compensated Plaintiff and the other
20 Class Members based on these artificially reduced hours

21 24. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
22 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff
23 and the other Class Members to remain on duty during their meal periods. On the few occasions
24 Plaintiff and the other Class Members received uninterrupted meal periods, these meal periods
25 were often beyond the fifth hour worked. The Defendants also failed to pay premium wages for
26 days on which it failed to provide Plaintiff and all of the other Class Members with meal periods
27 as required by law.

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1 25. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
2 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
3 worked or major portion thereof. Defendants required Plaintiff and the other Class Members to
4 remain on duty during their rest periods. On the few occasions Plaintiff and the other Class
5 Members received uninterrupted rest periods, these rest periods did not occur for every four hours
6 worked or substantial portion thereof. The Defendants also failed to pay premium wages for days
7 on which it failed to authorize and permit Plaintiff and all of the other Class Members to take rest
8 breaks as required by law.

9 26. At all relevant times, the Defendants required Plaintiff and the other Class
10 Members to incur certain business expenses in the course of performing their duties. Defendants
11 required Plaintiff and the other Class Members to supply aprons and hair nets to perform their job
12 duties. Plaintiff and the Class Members purchased these items. However, the Defendants did not
13 provide these items and did not reimburse Plaintiff and the other Class Members for these items.

14 27. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
15 Class Members complete and accurate wage statements that state all hours worked at the correct
16 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
17 the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
18 discussed above. Defendants artificially reduced the number of hours recorded on Plaintiff and
19 the other Class Members' timesheets. Defendants compensated Plaintiff and the other Class
20 Members based on these artificially reduced hours. The wage statements failed to state all
21 minimum wages earned, all overtime wages earned, all regular wages earned, all meal period
22 premium wages earned, all rest break premium wages earned, all hours work at each rate of pay,
23 and related information. Moreover, Defendants also required Plaintiff and the other Class
24 Members to sign acknowledgments agreeing to these artificially reduced hours. Plaintiff and the
25 other Class Members had to sign these acknowledgements to receive their paychecks.

26 28. At all relevant times, the Defendants failed to maintain accurate employee records
27 of Plaintiff and all of the other Class Members.

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29. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular, and overtime wages for work performed;
- F. Not provided with accurate and complete wage statements; and
- G. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION
FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE
CORRECT RATES OF PAY

Lab. Code §§ 510, 1194, 1197, and 1198
(By Plaintiff, on behalf of herself and the Class, against all Defendants)

30. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

31. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

32. Section 2 of the Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

33. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from



engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

34. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

35. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.



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1 36. Labor Code section 1194 invalidates any agreement between an employer and an
2 employee to work for less than the minimum wage required under the applicable Wage Order.

3 37. Labor Code section 1197 makes it unlawful for an employer to pay an employee
4 less than the minimum wage required under the applicable Wage Order for all hours worked
5 during a payroll period.

6 38. Labor Code section 1198 makes it unlawful for an employer to employ an
7 employee under conditions that violate the Wage Order.

8 39. In conjunction, these provisions of the Labor Code require employers to pay non-
9 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
10 worked, including unrecorded hours when the employer knew or reasonably should have known
11 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
12 Cal.4th 575, 585.)

13 40. At all relevant times during the applicable limitations period, Defendants failed to
14 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
15 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
16 respectively, that they worked at the correct rates of pay. Defendants artificially reduced the
17 number of hours recorded on Plaintiff and the other Class Members' timesheets. Defendants
18 compensated Plaintiff and the Class Members based on these artificially reduced amount of hours.
19 Moreover, Defendant also failed to pay Plaintiff and the other Class Members for all hours worked
20 because Employer did not pay Plaintiff and the Class Members for at least the first week of work.

21 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
22 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
23 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
24 rates of pay as required by California law.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

42. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

43. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

44. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

45. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

46. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the



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meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

47. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

48. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

49. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Employer required Plaintiff and the other Class Members to remain on duty during their meal periods. On



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1 the few occasions Plaintiff and the other Class Members received uninterrupted meal periods,
2 these meal periods were often beyond the fifth hour worked.

3 50. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
4 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class
5 Members their 30-minute off-duty meal period within the first five hours of work. Furthermore,
6 Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and
7 the other Class Members with timely meal periods.

8 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times
9 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
10 which resulted in Defendants not providing the and the Class Members with all off-duty meal
11 periods required by California law.

12 52. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
13 suffered damages in amounts subject to proof to the extent they were not paid additional
14 wages owed for all meal periods not provided to them.

15 53. By reason of the above, Plaintiff and the Class Members are entitled to premium
16 wages for workdays in which one or more meal periods were not provided to them pursuant to
17 California Labor Code § 226.7.

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
20 **Lab. Code § 226.7**

21 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

22 54. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

23 55. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and protections
25 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

26 56. In relevant part, California Labor Code § 1198 states:

27 The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment



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of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

57. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

58. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.



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1 59. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
3 of work, or major fraction thereof.

4 60. Defendants intentionally failed to authorize and permit Plaintiff and the Class
5 Members to take all 10-minute rest periods free from any work duties in accordance with the
6 Wage Order. Defendants required Plaintiff and the other Class Members to remain on duty during
7 their rest periods. On the few occasions Plaintiff and the other Class Members received
8 uninterrupted rest periods, these rest periods did not occur for every four hours worked or
9 substantial portion thereof.

10 61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
11 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
12 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
13 Plaintiff and the other Class Members to take timely rest periods.

14 62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
15 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
16 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
17 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
18 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
19 to authorize and permit them to take 10-minute rest periods every four hours worked or major
20 fraction thereof.

21 63. Plaintiff is informed and believes and thereon alleges that, at all relevant times
22 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
23 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
24 take all rest breaks required by California law.

25 64. Defendants failed to provide Plaintiff with all required rest breaks in accordance
26 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
27 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
28 which resulted in Defendants not providing the Class Members with all rest breaks required by



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1 California law.

2 65. Defendants failed to pay Plaintiff the additional wages required by California
3 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
4 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
5 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
6 Class Members with additional wages for all rest breaks not provided to them as required by
7 California Labor Code § 226.7.

8 66. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
9 suffered damages in amounts subject to proof to the extent they were not paid additional wages
10 owed for all rest breaks not provided to them.

11 67. By reason of the above, Plaintiff and the Class Members are entitled to premium
12 wages for workdays in which one or more rest breaks were not provided to them pursuant to
13 California Labor Code § 226.7.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY**

16 **Lab. Code § 2802**

17 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

18 68. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

19 69. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
20 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties."

21 70. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 71. At all relevant times, Defendants required Plaintiff and the Class Members to incur
24 certain business expenses in the course of performing their duties.

25 72. As described above, Defendants required Plaintiff and the other Class Members to
26 incur certain business expenses in the course of performing their duties. Defendants required
27 Plaintiff and the other Class Members to supply aprons and hair nets to perform their job duties.
28 Plaintiff and the Class Members purchased these items. However, the Defendants did not provide



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1 these items and did not reimburse Plaintiff and the other Class Members for these items.

2 73. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
5 during the course of performing their duties.

6 **FIFTH CAUSE OF ACTION**
7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**
8 **Lab. Code §§ 226 and 226.2**
9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

10 74. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 75. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
12 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
13 statement showing:

14 A. Gross wages earned;

15 B. Total hours worked by the employee, except for any employee whose
16 compensation is solely based on a salary and who is exempt from payment of overtime under
17 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

18 C. The number of piece rate units earned and any applicable piece rate if the
19 employee is paid on a piece-rate basis;

20 D. All deductions, provided that all deductions made on written orders of the
21 Employee may be aggregated and shown as one item;

22 E. Net wages earned;

23 F. The inclusive dates of the period for which the employee is paid;

24 G. The name of the employee and his or her social security number, except
25 that by January 1, 2008, only the last four digits of his or her social security number or an
26 employee identification number other than a social security number may be shown on the itemized
27 statement;

28 H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the



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1 corresponding number of hours worked at each hourly rate by the employee.

2 76. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
3 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
4 the employer fails to provide accurate and complete information as required by California Labor
5 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
6 alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
14 and address of the legal entity that secured the services of the employer during the pay period;

15 D. The name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number; and

17 E. The number of piece-rate units earned and the piece rate.

18 77. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
19 means a reasonable person would be able to readily ascertain the information without reference
20 to other documents or information.

21 78. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
24 the corresponding number of hours worked at each rate by the employee and other requirements
25 of California Labor Code section 226. Defendants failed to state in the wage statements they
26 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
27 including, but not limited to, regular and overtime wages. Defendants knowingly and intentionally
28 did not issue either as a detachable part of the check, draft, or voucher paying the employee’s



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1 wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the
2 Class Members that state all minimum wages earned, all overtime wages earned, all regular wages
3 earned, all meal period premium wages earned, all rest break premium wages earned, and all
4 hours worked at each rate of pay.

5 79. Defendants' failure to provide Plaintiff and the other Class Members with accurate
6 wage statements was knowing and intentional. Defendants artificially reduced the number of
7 hours recorded on Plaintiff and the other Class Members' timesheets. Defendants compensated
8 Plaintiff and the other Class Members based on these artificially reduced amount of hours.
9 Defendants also required Plaintiff and the other Class Members to sign acknowledgments
10 agreeing to these artificially reduced hours. Plaintiff and the other Class Members had to sign
11 these acknowledgements to receive their paychecks. Defendants had the ability to provide
12 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
13 wage statements that Defendants knew were not accurate.

14 80. As a result of being provided with inaccurate wage statements by Defendants,
15 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
16 wage statements were violated and they were misled about the amount of wages they had actually
17 earned and were owed. In addition, the absence of accurate information on their wage statements
18 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
19 and mathematical computations to determine the amounts of wages owed, has caused difficulty
20 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
21 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
22 and the other Class Members were not able to ascertain from the wage statements whether
23 Defendants complied with their obligations under California Labor Code section 226(a).

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SIXTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY PAY FINAL WAGES
(Lab. Code §§ 201, 202, and 203)
(By Plaintiff, on behalf of herself and the Class, against all Defendants)

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

83. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

84. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

85. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Plaintiff, including all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay.

86. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

87. Plaintiff is informed and believes that Defendants’ failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

88. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time



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1 penalties for each Class Member.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

5 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

6 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 90. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class Members have been employees of Defendants and entitled to the benefits and protections
9 of the Business and Professions Code §§ 17200, *et seq.*

10 91. The unlawful conduct of Defendants alleged herein amount to and constitutes
11 unfair competition within the meaning of California Business & Professions Code §§
12 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
13 unfairly gained a competitive advantage over other comparable companies doing business in
14 California that comply with their legal obligations to compensate employees for all earned wages.

15 92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
16 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
17 Members were deprived of expense reimbursement, minimum wages, regular wages, overtime
18 wages, missed rest period premium wages, missed meal period premium wages, and comparable
19 money and property.

20 93. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
21 Class Members are entitled to restitution of all monies rightfully belonging to them that
22 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
23 practices.

24 94. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
25 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
26 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

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EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

95. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

96. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning March 22, 2021, and ending on the date that final judgment is entered in this action.

97. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

98. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.



1 99. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

3 100. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
4 behalf of themselves and other current or former employees, to bring a civil action to recover civil
5 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

6 101. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
7 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
9 applicable limitations period in the following amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
12 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
13 (penalty amounts established by California Labor Code § 210).

14 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
15 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
16 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
17 California Labor Code § 226.3).

18 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
19 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
20 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
21 established by California Labor Code § 558).

22 D. For violations of California Labor Code § 1174, five hundred dollars
23 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
24 amounts established by Labor Code § 1174.5).

25 E. For violations of California Labor Code § 1197, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
27 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
28 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for



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1 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
2 period for each subsequent violation (penalty amounts established by California Labor Code §
3 2699(f)(2)).

4 102. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated March 22, 2022, Plaintiff filed written notice online with
6 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
7 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations. A true and correct copy
9 of the notice to the LWDA dated March 22, 2022 is attached as Exhibit A. Plaintiff accompanied
10 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
11 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
12 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
13 these allegations.

14 103. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
15 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
16 connection with their claims for civil penalties.

17 **PRAYER FOR RELIEF**

18 104. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
19 relief and judgment against Defendants as follows:

20 A. An order that the action be certified as a class action with respect to
21 Plaintiff’s claims for violations of California law;

22 B. An order that Plaintiff be appointed class representative;

23 C. An order that counsel for Plaintiff be appointed class counsel;

24 D. Unpaid wages, including minimum, regular, overtime, missed meal period
25 premium wages, and missed rest period premium wages;

26 E. Liquidated damages;

27 F. Statutory penalties, including waiting time penalties;

28 G. Civil penalties;

H. Restitution;



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- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys' fees; and
- N. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 27, 2022

By: 

DAVID G. SPIVAK
CHRISTINA J. PREJEAN
Attorneys for Plaintiff, MARTHA P.
BRIANO MARTINEZ, and all others
similarly situated



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EXHIBIT A



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

March 22, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Martha P. Briano Martinez / Nor Cal Foods, LLC

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Martha P. Briano Martinez (hereafter “Briano” or “Complainant”) provides notice that Nor Cal Foods, LLC, a California limited liability company, and related entities (collectively “the NCF Employers” or “the Employers”) violated her rights and those of all other individuals the NCF Employers have employed or otherwise contracted with in California as all hourly, non-exempt employees, including, but not limited to, cooks, servers, food preparers, cashiers, busboys, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. On behalf of herself and all other Aggrieved Employees, Briano hereby provides this notice to the Labor & Workforce Development Agency and the NCF Employers and their agents and representatives.

At all relevant times, the NCF Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Briano and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately October 2, 2020, the NCF Employers began to employ Briano in Santa Rosa in the position of hourly, non-exempt cook. The NCF Employers continuously employed her in that capacity until on or about July 5, 2021, when her employment ended.

At all relevant times, the NCF Employers issued wages to Briano and all of the other Aggrieved Employees on a bi-weekly basis and paid them by the hour. At all relevant times, the NCF Employers classified Briano and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for the work they performed during their first week of employment.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NCF Employers failed to pay Briano and the other Aggrieved Employees for all overtime hours worked by altering time records to artificially reduce the time Briano and the other Aggrieved Employees purportedly worked. The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, whenever Briano and the other Aggrieved Employees worked overtime hours, the NCF employers altered the time records to make these overtime hours appear as if they were hours worked for an entirely different shift.

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. Employer required Briano and the other Aggrieved Employees to remain on duty during their

meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often after the five hours worked. Moreover, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Employer required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these rest periods did not occur for every four hours worked or substantial portion thereof. Moreover, the NCF Employers also failed to pay premium wages for days on which they failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano and the other Aggrieved Employees purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items.

At all relevant times, the NCF Employers failed to issue to Briano and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the other Aggrieved Employees the unpaid wages discussed above. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. As a result, The NCF Employers compensated Briano and the other Aggrieved Employees based on these artificially reduced amount of hours. The wage statements failed to state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, all hours worked at each rate of pay. Moreover, The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to these artificially reduced hours. Briano and the other Aggrieved Employees had to sign these acknowledgements to receive their paychecks.

The NCF Employers also failed to timely pay Briano and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Although, Briano and the other Aggrieved Employees signed acknowledgments agreeing to the artificially reduced hours, Briano and the other Aggrieved Employees had no alternative choice because NCF required Briano and the Aggrieved Employees to sign these agreements to receive their paychecks.

The NCF Employers failed to maintain accurate employee records of Briano and all of the other Aggrieved Employees.

For the reasons stated herein, Briano alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The NCF Employers failed to pay Briano and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The NCF Employers failed to provide Briano and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to provide them with one or more meal periods as required by law;
- (e) The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees at one hour's pay for each day in which the NCF Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NCF Employers failed to indemnify Briano and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NCF Employers knowingly and intentionally failed to provide Briano and all of the other Aggrieved Employees with accurate wage statements;
- (h) The NCF Employers willfully failed to timely pay Briano and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NCF Employers and when their employment ended; and
- (i) The NCF Employers failed to maintain accurate employment records pertaining to Briano and all of the other Aggrieved Employees.

Accordingly, Briano now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the NCF Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NCF Employers, Briano, and all of the Aggrieved Employees were covered by the Wage Order because the NCF Employers operated, and Briano, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Briano and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

NCF Employers failed to pay Briano and the other Aggrieved Employees at the applicable minimum or regular wage rate for all hours worked by altering time records to artificially reduce the time Briano and the Aggrieved Employees purportedly worked. The NCF Employers also failed to pay Briano and the other Aggrieved Employees for all overtime hours worked because of these altered time records. The NCF Employers would only compensate Briano and the other Aggrieved Employees based on these artificially reduced hours. Moreover, The NCF Employers failed to pay Briano and the other Aggrieved Employees for all hours worked because The NCF Employers did not pay Briano and the other Aggrieved Employees for at least the first week of work.

At all relevant times during the applicable limitations period, the NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Briano now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with all timely meal periods. The NCF Employers denied Briano

and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their meal periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted meal periods, these meal periods were often beyond the fifth hour worked. Furthermore, the NCF Employers failed to pay premium wages for days on which they failed to provide Briano and all of the other Aggrieved Employees with timely meal periods. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NCF Employers failed to authorize and permit Briano and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NCF Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NCF Employers required Briano and the other Aggrieved Employees to remain on duty during their rest periods. On the few occasions Briano and the other Aggrieved Employees received uninterrupted rest periods, these meal periods were often beyond the fourth hour worked. Moreover, the NCF Employers failed to pay Briano and all of the other Aggrieved Employees premium wages on workdays the NCF Employers failed to provide Briano and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Briano now seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the NCF Employers required Briano and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The NCF Employers required Briano and all of the other Aggrieved Employees to supply aprons and hair nets to perform their job duties. Briano purchased these items. However, the NCF Employers did not provide these items and did not reimburse Briano and the other Aggrieved Employees for these items. Accordingly, Briano seeks civil penalties for these Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NCF Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NCF Employers failed to state in the wage statements they issued to Briano and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages. The NCF Employers knowingly and intentionally failed to state on the wage statements they issued to Briano and all of the

other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all overtime wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and all hours worked at each rate of pay. The NCF Employers artificially reduced the number of hours recorded on Briano and the other Aggrieved Employees' timesheets. The NCF Employers compensated Briano and the other Aggrieved Employees based on this artificially reduced amount. The NCF Employers also required Briano and the other Aggrieved Employees to sign acknowledgments agreeing to the artificially reduced hours to receive their paychecks.

Accordingly, Briano seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NCF Employers failed to compensate Briano and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages, at the intervals stated above. As a result, the NCF Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Briano now seeks civil penalties for the Labor Code violations that the NCF Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus

25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NCF Employers failed to pay Briano and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Briano, including minimum wages, regular wages, overtime wages, unprovided rest break premium wages, unprovided meal period premium wages. By failing to pay Briano and all of the other Aggrieved Employees as set forth above at the end of employment, the NCF Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Briano seeks civil penalties from the NCF Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

[illegible]

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Martha P. Briano Martinez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Martha P. Briano Martinez
Walter L. Haines, Esq.

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