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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 29 2022

By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VALERIE SANCHEZ, as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other non-party Aggrieved Employees,

Plaintiff,

vs.

SUNRISE RESTAURANTS, LLC, a Nebraska limited liability company; W.K.S. RESTAURANT CORPORATION, a California corporation; W.K.S. SUNRISE HOLDINGS, LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIV SB 2213630

COMPLAINT – PAGA ENFORCEMENT ACTION

(1) Claim for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

BY FAX

Plaintiff Valerie Sanchez, as an aggrieved employee and on behalf of the State of California and all other non-party Aggrieved Employees, alleges as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency ("LWDA") in this case on April 22, 2022, until judgment ("non-party Aggrieved Employees"). Plaintiff's share of civil penalties sought in this action does not exceed $75,000.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties attributable to violations personally suffered are less than $75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Valerie Sanchez is a resident of Ontario, in San Bernardino County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2018 to January 2022. Plaintiff worked for Defendants as a Server, Waitress, Cook, and Person in Charge ("PIC") in San Bernardino County and Los Angeles County, California. Plaintiff typically worked eight (8) or more hours per day and six (6) to seven (7) days per week. At the time Plaintiff's employment with Defendants ended, she was compensated approximately $14 to $19 per hour, depending on the position she worked. As a waitress and server, Plaintiff's job duties included, without limitation, greeting and seating guests, taking orders, bringing out food, handling checks, bussing tables, and cleaning and maintaining the dining area. As a cook, Plaintiff's job duties included, without limitation, cooking food, re-stocking ingredients, and cleaning and maintaining the kitchen. As a PIC, Plaintiff's job duties included, without limitation, the duties of the server, waitress, and/or cook positions.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a "Binding Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to new

employees for signature during the orientation process, including the Team Member Handbook, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with all of the other on-boarding documents. Furthermore, Defendants did not set forth in the agreement or otherwise provide employees with the rules which will govern the arbitration, instead forcing employees to seek this information out on their own ("[A] copy of the most current JAMS Rules may be obtained from Company's People Services Department or by visiting http://www.jamsadr.com/rules-employment-arbitration/.").

8. SUNRISE RESTAURANTS, LLC was and is, upon information and belief, a Nebraska limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. W.K.S. RESTAURANT CORPORATION was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

10. W.K.S. SUNRISE HOLDINGS, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

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

12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC, at all relevant times.

13. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, SUNRISE

RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC; and/or DOES 1 through 10 (collectively, "Defendants" or "SUNRISE"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

15. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

16. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties available to Plaintiff and other non-party Aggrieved Employees under the law.

17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

(a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;

(b) jointly exercised meaningful control over Plaintiff's and other non-party Aggrieved Employees' wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;

(c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

18. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

19. SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

20. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name SUNRISE.

21. Plaintiff further alleges, upon information and belief, that the Defendants SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S.

SUNRISE HOLDINGS, LLC are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (https://businesssearch.sos.ca.gov/), SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC have the same principal office address and mailing address, "5856 CORPORATE AVENUE, SUITE 200, CYPRESS, CA 90630";

(b) According to their most recent "Statement of Information" forms filed with the California Secretary of State, SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC share the chief executive officer/member, Roland C. Spongberg;

(c) According to their most recent "Statement of Information" forms filed with the California Secretary of State, SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC share the same agent for service of process, BUSINESS FILINGS INCORPORATED; and

(d) On information and belief, SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and W.K.S. SUNRISE HOLDINGS, LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants operate at least nine Denny's restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Cypress, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees

throughout California.

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

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

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

26. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

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

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all renumeration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms of remuneration in calculating the regular rate of pay for other non-party Aggrieved Employees.

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

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

32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor

Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

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

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they could not implement an unlawful tipping policy, which required Plaintiff and other non-party Aggrieved Employees to turn over and pay a portion of the tips or

gratuities paid to them to Defendants, or Defendants made unlawful withholdings and deductions from Plaintiff and other non-party Aggrieved Employees' earned tips or gratuities.

38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they were not permitted to compel or coerce other non-party Aggrieved Employees to patronize their business in the purchase of anything of value, but did, in fact, require other non-party Aggrieved Employees to purchase various items, including uniforms, from Defendants.

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

40. Plaintiff are informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties and also have seats nearby to use during a lull in tasks that do require moving about or standing.

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

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

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

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

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

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

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

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

(a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to

the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

(a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give

> written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

50. On April 22, 2022, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-880002-22. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 22, 2022, is attached hereto as "Exhibit 1."

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

52. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

53. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)

provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552, 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552, 1198, and the applicable IWC Wage Order.

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

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

56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

58. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

59. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;

(b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;

(c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

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

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

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

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

(h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;

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

(j) Violation of Labor Code section 351 for collecting and/or withholding tips and gratuities given to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(k) Violation of Labor Code section 450 for compelling other non-party Aggrieved Employees to patronize Defendants' or any other person's business in the purchase of anything of value, as set forth below;

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

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

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

(o) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff

and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and

(p) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

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

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

64. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh

(7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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

66. First, during the relevant period, Defendants had, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved Employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. As stated in Defendants' Team Member Handbook, "all overtime must be pre-approved by the [] manager before it is worked" or otherwise team members "may be subject to disciplinary action." This policy of limiting overtime, coupled with Defendants' use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before their scheduled shift times. For example, Plaintiff was often required to travel to grocery stores and/or to Defendants' other locations to pick up supplies and ingredients on her way to work, prior to clocking in for the start of her shift. Moreover, Plaintiff spent 15-35 minutes traveling to Defendants' other restaurant locations in Claremont and Corona to cover shifts when those locations were understaffed, but was not compensated for this travel time. As a further example, when Plaintiff arrived early for her shifts, Defendants' management often required her to start working immediately, for up to an hour, before she was able to clock in because the restaurant was busy. Additionally, Defendants' managers often called Plaintiff on her personal cellular phone before the start of her shifts, asking her to find coverage for employees who were out. Thus, Defendants failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Plaintiff and other non-party Aggrieved

Employees received no compensation for this time.

67. Second, Defendants' company-wide policy of limiting overtime also forced Plaintiff and other non-party Aggrieved Employees to work after clocking out at the end of their scheduled shifts and/or on their days off. For example, Defendants' management often pressured Plaintiff to continue working after she had clocked out by cashing customers out, helping the kitchen staff, and seating customers. She was told she could not stay clocked in because overtime hours were limited by the labor budget. As a further example, Plaintiff's managers would call her on her personal cellular phone on her off-days to discuss work-related matters, such as what occurred at the restaurant during her shift and/or to pressure her to work more shifts. This off-the-clock work could have been recorded by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and other non-party Aggrieved Employees. Thus, Defendants failed to track all of the time that employees spent performing work-related tasks after clocking out at the end of their shifts or on days off, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time spent working.

68. Third, Defendants had, and continue to have, a company-wide policy of circumventing the payment of overtime wages to minimize labor costs. Specifically, Defendants implemented a timekeeping policy that resets the work day around 7:00 a.m. and therefore treats shifts extending into the following "day" as two separate shifts. This policy had the effect of reducing the amount of overtime that would need to be paid to other non-party Aggrieved Employees when they worked overnight or early morning shifts. For example, when other non-party Aggrieved Employees worked shifts longer than eight (8) hours that extended past 7:00 a.m., they were not paid overtime or double-time premiums for all of the hours they worked in excess of eight (8) hours in a day and/or in excess of twelve (12) hours in a day.

69. Further, as part of this practice of circumventing payment of overtime wages to employees, Defendants utilized a uniform timekeeping system that automatically clocked-out and locked out employees during two "reboots" at 4:00 a.m. and at 7:00 a.m. each day. Indeed, when resetting, Defendants' timekeeping system locked the point-of-sale ("POS") machines that Plaintiff and other non-party Aggrieved Employees used to clock in and clock out, so that

they were forced to clock out and continue working while off-the-clock before being able to log back into the POS system to clock in once the reset had been completed. For example, when Plaintiff was scheduled to work an overnight shift, she was automatically clocked out at 4:00 a.m. for a period of at least 20-25 minutes and was forced to continue working before being able log back into the POS system to clock in, after the reset had been completed, time for which she was not paid. Often, as stated above, these resets made some shifts appear to be split over two days, and limited the amount of overtime that Plaintiff and other non-party Aggrieved Employees would have normally received had their shifts not been made to look like two separate shifts. Moreover, because Defendants' timekeeping system was integrated with the company's POS system, Plaintiff and other non-party Aggrieved Employees would often have to wait to clock in for the start of their shifts, because employees from the morning shift were using the POS system to handle customer transactions. Thus, Plaintiff and other non-party Aggrieved Employees performed work that was not recorded, time for which they were not paid.

70. Fourth, as stated, Defendants had, and continue to have, a company-wide policy of strictly staffing their restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, Plaintiff's managers often pressured her to clock in as a server so that she would not use the hours allocated to managers and PICs, even though she had been promoted to the PIC position. Based on information and belief, there were approximately 155 hours allocated to managers and PICs every two weeks, and there were a certain number of hours allocated for servers and hosts as well. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, Defendants have a practice of failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods.

71. As a result of this insufficient meal period coverage, Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during

shifts when they were entitled to receive a meal period. For example, Plaintiff often missed her meal periods entirely because there were an inadequate number of employees to take over her job duties while she took her meal periods. Further, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by Defendants. Consequently, Plaintiff and other non-party Aggrieved Employees performed work during meal periods for which they were not paid.

72. Fifth, to prevent Plaintiff and other non-party Aggrieved Employees from incurring meal period penalties that Defendants would otherwise owe, Defendants' timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted.

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

74. Furthermore, Defendants did not pay other non-party Aggrieved Employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an

hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

FAILURE TO PAY MINIMUM WAGES

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

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

77. As set forth above, as a result of Defendants' policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock before and after their scheduled shift start- and end-times to complete their tasks, such as traveling to grocery stores and Defendants' other locations to pick up supplies, driving to other restaurant locations to cover shifts, responding to phone calls from Defendants' management about work-related matters, and attending to customers. Moreover, as set forth above, Defendants utilized a timekeeping system that automatically

clocked-out and locked out employees during overnight shifts during two "reboots" at 4:00 a.m. and 7:00 a.m., causing Plaintiff and/or other non-party Aggrieved Employees to work off-the-clock before they were able to log back into the system to clock in, once the reset had been completed. Furthermore, as stated, because Defendants' timekeeping system was integrated with the company's POS system, Plaintiff and other non-party Aggrieved Employees had to wait to clock in for the start of their shifts when other employees were using the POS system to handle customer transactions. Defendants failed to track this time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

78. Second, as set forth above, due to Defendants' company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that Defendants would otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and other non-party Aggrieved Employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed.

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

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

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

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

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

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

85. During the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure

to schedule meal periods, resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled.

86. As a result, Plaintiff and other non-party Aggrieved Employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Plaintiff often missed her meal periods entirely because there were an inadequate number of employees to take over her job duties while she took her meal periods, and would have her meal periods interrupted or shortened by Defendants' management or other coworkers requesting she return to work. Further, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by Defendants.

87. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day at least once per week and never took a second meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

88. At all times mentioned herein, Defendants knew or should have known that as a result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

89. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have

not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay meal period premiums to other non-party Aggrieved Employees, they did so at the incorrect rates. In addition to an hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, because Defendants did not properly calculate other non-party Aggrieved Employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premiums. As a result, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

90. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

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

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

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

95. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide policies and/or practices of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take their rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

96. Furthermore, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and other non-party Aggrieved Employees remain on or near the work premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands or getting something to eat. Thus, Defendants effectively maintained control

over Plaintiff and other non-party Aggrieved Employees during rest periods.

97. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff had to forego her rest periods entirely during each shift because the restaurant was busy, did not have coverage, and there was an expectation that all employees would work through their rest periods.

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

99. Accordingly, Defendants failed to authorize and permit all compliant rest periods and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS

VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

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

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

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

103. Additionally, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums and/or reporting time pay, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

104. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for

which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

106. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in

violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

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

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

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

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

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

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

FAILURE TO PAY ALL GRATUITIES OWED

VIOLATION OF LABOR CODE SECTION 351

115. At all times relevant herein, Labor Code section 351 provides that an employer may not collect, take or receive any part of a gratuity paid to or left for an employee by a patron. Gratuity is deemed to be the sole property of the employee or employees to whom it was paid, given, or left for. California law permits employer-mandated tip pooling so long as the tip pooling policy is reasonable. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the portion indicated on the credit

card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

116. During the relevant time period, Defendants made unlawful withholdings and deductions, such as credit card payment processing fees or costs, from Plaintiff's and other non-party Aggrieved Employees' earned tips or gratuities when customers paid tips using credit cards. As a result, Defendants violated California Labor Code section 351.

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

COMPELLING PATRONIZATION

VIOLATION OF LABOR CODE SECTIONS 450

118. At all relevant times herein, California Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

119. During the relevant time period, Defendants had a company-wide policy of only providing employees with one (1) uniform shirt per year, and requiring employees to purchase their own replacement or additional uniform shirts. Other non-party Aggrieved Employees were required to pay for uniform shirts bearing the "Denny's" logo from the Denny's website if they wanted replacement or additional uniform shirts. Other non-party Aggrieved Employees were forced to pay for uniform shirts, approximately $24 each, because Defendants expected them to report to work in clean and presentable uniforms shirts bearing the "Denny's" logo, but did not provide their employees with a sufficient number of uniforms.

120. Defendants' conduct of compelling and/or coercing other non-party Aggrieved Employees to purchase goods, services, or anything of value, is in violation of California Labor Code section 450. Other non-party Aggrieved Employees are entitled to recover civil penalties

pursuant to Labor Code sections 2699(a), (f) and (g).

FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN

VIOLATION OF LABOR CODE SECTIONS 551 and 552

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

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

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

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

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FAILURE TO PROVIDE SUITABLE SEATING

VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11050(14)(A)

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

126. California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

127. Plaintiff alleges that Defendants' restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other non-party Aggrieved Employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could have provided other non-party Aggrieved Employees with a seat or stool at host stands, but instead denied them seating and forced other non-party Aggrieved Employees to stand throughout the day.

128. Other non-party Aggrieved Employees spent a substantial portion of their day behind these or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, Defendants systematically, and on a company-wide basis, did not provide seats or stools at or near host stands, forcing other non-party Aggrieved Employees to stand throughout their work shifts.

129. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other non-party Aggrieved Employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. Defendants' management did not inform other non-party Aggrieved Employees that they were allowed to sit

down, provide any means for them to sit down, or mention any policy regarding sitting.

130. Defendants could have placed seats or stools at each host stand for use by other non-party Aggrieved Employees with reasonable or no modification to these work areas. However, on a company-wide basis, Defendants did not provide seats or stools at or near host stands. Defendants' management did not inform other non-party Aggrieved Employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

131. As a result of Defendants' company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

132. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE SUITABLE SEATING

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

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

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

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

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

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

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

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

FAILURE TO PAY REPORTING TIME PAY

VIOLATION OF LABOR CODE SECTION 1198

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

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

142. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of the usual or scheduled day's work.

143. During the relevant period, Defendants had a company-wide practice of sending other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other non-party Aggrieved Employees for half of their usual or scheduled shift. For example, on information and belief,

when scheduled to work an eight (8) hour shift, other non-party Aggrieved Employees were sent home before four (4) hours had elapsed because business was slow, but were only paid for the time that they had worked. Although other non-party Aggrieved Employees would report to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their usual or scheduled shifts without giving them reporting time pay.

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

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

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

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146. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other non-party Aggrieved Employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff and other non-party Aggrieved Employees would be contacted outside of their scheduled shifts on their personal cellular phones by Defendants' managers and/or supervisors regarding scheduling and other work-related matters. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for this cost.

147. Second, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to use their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff was required to run company errands and drive to cover shifts at other Denny's restaurant locations owned by Defendants. During the relevant time period, Plaintiff was required to use her personal vehicle and drive up to 20 miles to pick up supplies from grocery stores and other restaurant locations on her way to work. Additionally, approximately twice per month, Plaintiff was required to use her personal vehicle to drive 22 miles to work at Defendants' restaurant in Corona when they were short-staffed. Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their personal vehicles to carry out their work-related responsibilities, Defendants failed to reimburse them for their mileage or travel expenses.

148. Third, during the relevant time period, Defendants required Plaintiff and other non-party Aggrieved Employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff spent about $10 per year on server books in order to take down customer orders, because Defendants failed to provide her with the necessary supplies and/or equipment which were required for the restaurant to operate properly and/or meet management's

expectations. Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase supplies and equipment to carry out their work-related responsibilities, Defendants failed to reimburse them for their out-of-pocket costs.

149. Fourth, during the relevant time period, Defendants expected Plaintiff and other non-party Aggrieved Employees to "dress for success," requiring all employees to project a professional image, "wear proper attire at all times," and adhere to grooming and cleanliness standards. Defendants' written dress code policy further states that "[e]mployees are fully responsible for the cleanliness of their uniform." Plaintiff and other non-party Aggrieved Employees were thus required to report to work wearing clean uniforms bearing the Denny's company logo, including uniform shirts, aprons, head covers, and/or hats. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff and other non-party Aggrieved Employees with one (1) uniform shirt per year. Because Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of uniform shirts in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and other non-party Aggrieved Employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Plaintiff's and other non-party Aggrieved Employees' uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, Plaintiff had to wash her uniform items separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

150. Fifth, as stated above, Defendants provided an insufficient number of uniform shirts to employees, and had a company-wide policy of requiring other non-party Aggrieved Employees to purchase replacement or additional uniform shirts. Other non-party Aggrieved Employees were required to purchase uniform shirts bearing the Denny's logo for

approximately $24 each. Thus, Defendants failed to reimburse other non-party Aggrieved Employees for all of the costs of obtaining replacement or additional uniform shirts.

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

152. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)

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

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 351 (by failing to pay all gratuities owed); 450 (by compelling and/or coercing employees to patronize employer's business); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and

2810.5 (by failing to provide written notice of information material to employment).

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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

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

Dated: June 29, 2022

Respectfully submitted,

Capstone Law APC

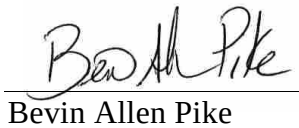
By: 

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EXHIBIT “1”

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April 22, 2022

VIA ONLINE SUBMISSION

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

Subject: *Valerie Sanchez v. Sunrise Restaurants, LLC, et al.*

Dear PAGA Administrator:

This office represents Valerie Sanchez in connection with her claims under the California Labor Code. Ms. Sanchez was an employee of SUNRISE RESTAURANTS, LLC; W.K.S. RESTAURANT CORPORATION; and/or W.K.S. SUNRISE HOLDINGS, LLC. For the purpose of this letter, Ms. Sanchez collectively refers to these entities as "SUNRISE."

The employers may be contacted directly at the addresses below:

SUNRISE RESTAURANTS, LLC
5856 CORPORATE AVENUE, SUITE 200
CYPRESS, CA 90630

W.K.S. SUNRISE HOLDINGS, LLC
5856 CORPORATE AVENUE, SUITE 200
CYPRESS, CA 90630

W.K.S. RESTAURANT CORPORATION
5856 CORPORATE AVENUE, SUITE 200
CYPRESS, CA 90630

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

SUNRISE employed Ms. Sanchez as an hourly paid, non-exempt employee from approximately October 2018 to January 2022. Ms. Sanchez worked for SUNRISE as a Server, Waitress, Cook, and Person in Charge ("PIC) at its Denny's restaurant locations in Fontana and Claremont, California. During her employment, Ms. Sanchez typically worked eight (8) or more hours per day, six (6) to seven (7) days per week. Ms. Sanchez typically worked from 4:00 p.m. to 2:00 a.m. on Tuesdays,

and from 8:00 p.m. to 4:00 a.m. on all other days. Depending on the position she worked during her shifts, Ms. Sanchez was compensated approximately $14 to $19 per hour at the time her employment ended with SUNRISE. As a waitress and server, Ms. Sanchez's job duties included, without limitation, greeting and seating guests, taking orders, bringing out food, handling checks, bussing tables, and cleaning and maintaining the dining area. As a cook, Ms. Sanchez's job duties included, without limitation, cooking food, re-stocking ingredients, and cleaning and maintaining the kitchen. As a PIC, Ms. Sanchez's job duties included, without limitation, the duties of the server, waitress, and/or cook positions.

SUNRISE committed one or more of the following Labor Code violations against Ms. Sanchez the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c): [1]

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

SUNRISE RESTAURANTS, LLC is a Nebraska limited liability company, W.K.S. RESTAURANT CORPORATION is a California corporation, and W.K.S. SUNRISE HOLDINGS, LLC is a Delaware limited liability company. Together, they operate Denny's restaurant franchise locations throughout Southern California and other states. SUNRISE operates approximately nine (9) Denny's restaurant locations in California. Upon information and belief, SUNRISE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cypress, California, for all non-exempt, hourly paid employees working for SUNRISE in California, including Ms. Sanchez and other aggrieved employees. At all relevant times, SUNRISE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Sanchez and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the

[1] These facts, theories, and claims are based on Ms. Sanchez's experience and counsel's review of those records currently available relating to Ms. Sanchez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Sanchez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant period, SUNRISE had, and continues to have, a company-wide policy of discouraging and impeding Ms. Sanchez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. As stated in SUNRISE's Team Member Handbook, "all overtime must be pre-approved by the [] manager before it is worked" or otherwise team members "may be subject to disciplinary action." This policy of limiting overtime, coupled with SUNRISE's use of labor budgets and assignment of heavy workloads (*see infra*), led Ms. Sanchez and other aggrieved employees to work off-the-clock before their scheduled shift times. For example, Ms. Sanchez was often required to travel to grocery stores and/or to other SUNRISE locations to pick up supplies and ingredients on her way to work, prior to clocking in for the start of her shift. Moreover, Ms. Sanchez spent 15-35 minutes traveling to other SUNRISE locations in Claremont and Corona to cover shifts when those locations were understaffed, but was not compensated for this travel time. As a further example, when Ms. Sanchez arrived early for her shifts, SUNRISE's management often required her to start working immediately, for up to an hour, before she was able to clock in because the restaurant was busy. Additionally, SUNRISE's managers often called Ms. Sanchez on her personal cellular phone before the start of her shifts, asking her to find coverage for employees who were out. Thus, SUNRISE failed to track all of the time that employees spent performing work-related tasks prior to clocking in for the start of their shifts, and Ms. Sanchez and other aggrieved employees received no compensation for this time.

Second, SUNRISE's company-wide policy of limiting overtime also forced Ms. Sanchez and other aggrieved employees to work after clocking out at the end of their scheduled shifts and/or on their days off. For example, management often pressured Ms. Sanchez to continue working after she had clocked out by cashing customers out, helping the kitchen staff, and seating customers. She was told she could not stay clocked in because overtime hours were limited by the labor budget. As a further example, Ms. Sanchez's managers would call her on her personal cellular phone on her off-days to discuss work-related matters, such as what occurred at the restaurant during her shift and/or to pressure her to work more shifts. This off-the-clock work could have been recorded by SUNRISE, but it refused to do so to avoid payment of additional wages to Ms. Sanchez and other aggrieved employees. Thus, SUNRISE failed to track all of the time that employees spent performing work-related tasks after clocking out at the end of their shifts or on days off, and Ms. Sanchez and other aggrieved employees received no compensation for this time spent working.

Third, SUNRISE had, and continues to have, a company-wide policy of circumventing the payment of overtime wages to minimize labor costs. Specifically, SUNRISE implemented a timekeeping policy that resets the work day approximately around 7:00 a.m. and therefore treats shifts extending

into the following "day" as two separate shifts. This policy had the effect of reducing the amount of overtime that would need to be paid to other aggrieved employees when they worked overnight or early morning shifts. For example, when other aggrieved employees worked shifts longer than eight (8) hours that extended past 7:00 a.m., they were not paid overtime or double-time premiums for all of the hours they worked in excess of eight (8) hours in a day and/or in excess of twelve (12) hours in a day.

Further, as part of this practice of circumventing payment of overtime wages to employees, SUNRISE utilized a uniform timekeeping system that automatically clocked-out and locked out employees during two "reboots" at 4:00 a.m. and at 7:00 a.m. each day. Indeed, when resetting, SUNRISE's timekeeping system locked the point-of-sale ("POS") machines that Ms. Sanchez and other aggrieved employees used to clock in and clock out, so that they were forced to clock out and continue working while off-the-clock before being able to log back into the POS system to clock in once the reset had been completed. For example, when Ms. Sanchez was scheduled to work an overnight shift, she was automatically clocked out at 4:00 a.m. for a period of at least 20-25 minutes and was forced to continue working before being able log back into the POS system to clock in, after the reset had been completed, time for which she was not paid. Often, as stated above, these resets made some shifts appear to be split over two days, and limited the amount of overtime that Ms. Sanchez and other aggrieved employees would have normally received, had their shifts not been made to look like two separate shifts. Moreover, because SUNRISE's timekeeping system was integrated with the company's POS system, Ms. Sanchez and other aggrieved employees would often have to wait to clock in for the start of their shifts, because employees from the morning shift were using the POS system to handle customer transactions. Thus, Ms. Sanchez and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Fourth, as stated, SUNRISE had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, Ms. Sanchez's managers often pressured her to clock in as a server so that she would not use the hours allocated to managers and PICs, even though she had been promoted to PIC. Based on information and belief, there were approximately 155 hours allocated to managers and PICs every two weeks, and there were a certain number of hours allocated for servers and hosts as well. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, SUNRISE has a practice of failing to schedule meal periods, which further caused Ms. Sanchez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result of this insufficient meal period coverage, Ms. Sanchez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Sanchez often missed her meal periods entirely because there were an inadequate number of employees to take over her job duties while she took her meal periods. Further, because SUNRISE frowned upon employees accruing meal period penalties, SUNRISE's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SUNRISE. Consequently, Ms. Sanchez and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, to prevent Ms. Sanchez and other aggrieved employees from incurring meal period penalties

that SUNRISE would otherwise owe, SUNRISE's timekeeping system prevented Ms. Sanchez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Sanchez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, SUNRISE's timekeeping system further prevented Ms. Sanchez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

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

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

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

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

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

First, as stated, during the relevant time period, as a result of SUNRISE's policy of limiting the amount of overtime employees could accrue, SUNRISE required Ms. Sanchez and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start- and end-times to complete their tasks, such as traveling to grocery stores and other SUNRISE locations to pick up supplies, driving to other SUNRISE locations to cover shifts, responding to phone calls from SUNRISE's management about work-related matters, and attending to customers. Moreover, as set forth above, SUNRISE utilized a timekeeping system that automatically clocked-out and locked out

employees during overnight shifts during two "reboots" at 4:00 a.m. and 7:00 a.m., causing Ms. Sanchez and/or other aggrieved employees to work off-the-clock before they were able to log back into the system to clock in, once the reset had been completed. Furthermore, as stated, because SUNRISE's timekeeping system was integrated with the company's POS system, Ms. Sanchez and other aggrieved employees had to wait to clock in for the start of their shifts when other employees were using the POS system to handle customer transactions. SUNRISE failed to track this time Ms. Sanchez and other aggrieved employees spent working off-the-clock, and thus, Ms. Sanchez and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to SUNRISE's company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Ms. Sanchez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that SUNRISE would otherwise owe, SUNRISE pressured Ms. Sanchez and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, SUNRISE systematically failed to pay Ms. Sanchez and other aggrieved employees for actual hours worked during unpaid meal periods, because SUNRISE's timekeeping system locked out Ms. Sanchez and other aggrieved employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed.

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

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

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

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

twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, SUNRISE had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Ms. Sanchez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Ms. Sanchez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Ms. Sanchez often missed her meal periods entirely because there were an inadequate number of employees to take over her job duties while she took her meal periods, and would have her meal periods interrupted or shortened by SUNRISE's management or other coworkers requesting she return to work. Further, because SUNRISE frowned upon employees accruing meal period penalties, SUNRISE's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by SUNRISE.

Moreover, SUNRISE did not provide Ms. Sanchez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Ms. Sanchez worked shifts in excess of 10 hours in one day at least once per week and never took a second meal period. Ms. Sanchez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

SUNRISE knew or should have known that as a result of its company-wide policies and/or practices, Ms. Sanchez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SUNRISE further knew or should have known that it did not pay Ms. Sanchez and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted. As set forth above, SUNRISE's timekeeping system locked out Ms. Sanchez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed even when their meal periods were shortened or interrupted.

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

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

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

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

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

During the relevant time period, SUNRISE regularly failed to authorize and permit Ms. Sanchez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SUNRISE's company-wide policies and/or practices of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Ms. Sanchez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SUNRISE also failed to schedule rest periods, which, coupled with SUNRISE's failure to provide adequate rest period coverage, further led to Ms. Sanchez and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, SUNRISE maintained a company-wide on-premises rest period policy, which mandated that Ms. Sanchez and other aggrieved employees remain on SUNRISE's premises during their rest periods. Because Ms. Sanchez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands or getting something to eat. Thus, SUNRISE effectively maintained control over Ms. Sanchez and other aggrieved employees during rest periods.

As a result of SUNRISE's practices and policies, Ms. Sanchez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Sanchez had to forego her rest periods entirely during each shift because the restaurant was busy, did not have coverage, and there was an expectation that all employees would work through their rest periods.

SUNRISE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Sanchez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SUNRISE did pay other aggrieved

employees one (1) additional hour of premium pay for missed rest periods, SUNRISE did not pay other aggrieved employees at the correct rate of pay for premiums because SUNRISE failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SUNRISE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Sanchez and other aggrieved employees, in violation of section 1198. As stated, SUNRISE engaged in a company-wide practice and/or policy of falsifying Ms. Sanchez's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Sanchez and other aggrieved employees. Furthermore, in light of SUNRISE's failure to provide Ms. Sanchez and other aggrieved employees with second 30-minute meal periods to which they were entitled, SUNRISE kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, SUNRISE failed to pay Ms. Sanchez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

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

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

Violation of Labor Code § 351 – Unlawful Tipping Policy

California Labor Code section 351 provides that no employer shall collect, take, or receive any gratuity that is paid, given to, or left for an employee by a patron. Gratuity is deemed to be the sole property of the employee or employees to whom they are paid, given, or left for. California law permits employer-mandated tip pooling so long as the tip pooling policy is reasonable. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the portion indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.

Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

During the relevant time period, SUNRISE made unlawful withholdings and deductions, such as credit card payment processing fees or costs, from Ms. Sanchez's and other aggrieved employees' earned tips or gratuities when customers paid tips using credit cards. As a result, SUNRISE violated California Labor Code section 351.

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

Violation of California Labor Code § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's or any other person's business in the purchase of a good, service, or anything of value.

SUNRISE had a company-wide policy of only providing employees with one (1) uniform shirt per year, and requiring employees to purchase their own replacement or additional uniform shirts. Other aggrieved employees were required to pay for uniform shirts bearing the "Denny's" logo from the Denny's website if they wanted replacement or additional uniform shirts. Other aggrieved employees were forced to pay for uniform shirts, approximately $24 each, because SUNRISE expected them to report to work in clean and presentable uniforms shirts bearing the "Denny's" logo, but did not provide its employees with a sufficient number of uniforms.

SUNRISE's conduct of compelling and/or coercing other aggrieved employees to purchase goods, services, or anything of value, is in violation of California Labor Code section 450. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

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

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

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

SUNRISE's California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SUNRISE could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, SUNRISE systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

SUNRISE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SUNRISE's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SUNRISE's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SUNRISE's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, subdivision 14(A).

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

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

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

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

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

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

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

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

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

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

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

During the relevant time period, SUNRISE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because SUNRISE failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

SUNRISE had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on information and belief, when scheduled to work an eight (8) hour shift, other aggrieved employees were sent home before four (4) hours had elapsed because business was slow, but were only paid for the time that they had worked. Although other aggrieved employees would report to work based on the schedule that SUNRISE provided to them, SUNRISE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest

thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, SUNRISE, on a company-wide basis, required that Ms. Sanchez and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Sanchez and other aggrieved employees would be contacted outside of their scheduled shifts on their personal cellular phones by SUNRISE's managers and/or supervisors regarding scheduling and other work-related matters. Although SUNRISE required Ms. Sanchez and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, SUNRISE failed to reimburse them for this cost.

Second, during the relevant time period, SUNRISE, on a company-wide basis, required Ms. Sanchez and other aggrieved employees to use their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Sanchez was required to run company errands and drive to cover shifts at other SUNRISE Denny's restaurant locations. During the relevant time period, Ms. Sanchez was required to use her personal vehicle and drive up to 20 miles to pick up supplies from grocery stores and other SUNRISE locations on her way to work. Additionally, approximately twice per month, Ms. Sanchez was required to use her personal vehicle to drive 22 miles to work at SUNRISE's restaurant in Corona when they were short-staffed. Although SUNRISE required Ms. Sanchez and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SUNRISE failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, SUNRISE required Ms. Sanchez and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Sanchez spent about $10 per year on server books in order to take down customer orders, because SUNRISE failed to provide her with the necessary supplies and/or equipment which were required for the restaurant to operate properly and/or meet management's expectations. Although SUNRISE required Ms. Sanchez and other aggrieved employees purchase supplies and equipment to carry out their work-related responsibilities, SUNRISE failed to reimburse them for their out-of-pocket costs.

Fourth, during the relevant time period, SUNRISE expected Ms. Sanchez and other aggrieved

employees to "dress for success," requiring all employees to project a professional image, "wear proper attire at all times," and adhere to grooming and cleanliness standards. Defendants' written dress code policy further states that "Employees are fully responsible for the cleanliness of their uniform." Ms. Sanchez and other aggrieved employees were thus required to report to work wearing clean uniforms bearing the Denny's company logo, including uniform shirts, aprons, head covers, and/or hats. However, SUNRISE did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SUNRISE only provided Ms. Sanchez and other aggrieved employees with one (1) uniform shirt per year. Because SUNRISE failed to provide Ms. Sanchez and other aggrieved employees with an adequate number of uniform shirts in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Sanchez and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Sanchez's and other aggrieved employees' uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, SUNRISE failed to maintain uniforms they required Ms. Sanchez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Fifth, as stated above, SUNRISE provided an insufficient number of uniform shirts to employees, and had a company-wide policy of requiring other aggrieved employees to purchase replacement or additional uniform shirts. Other aggrieved employees were required to purchase uniform shirts bearing the Denny's logo for approximately $24 each. Thus, SUNRISE failed to reimburse other aggrieved employees for all of the costs of obtaining replacement or additional uniform shirts.

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

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

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the

employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

California Labor Code § 558(a)

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

Accordingly, Ms. Sanchez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Sanchez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against SUNRISE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 450, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. SUNRISE shall pay Ms. Sanchez and all other aggrieved employees employed by SUNRISE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. SUNRISE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.

3. SUNRISE shall conduct a survey or interview all current and former aggrieved employees in California who worked for SUNRISE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, mobile device expenses, supply and equipment expenses, uniform maintenance and replacement costs, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

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

5. SUNRISE shall reimburse Ms. Sanchez and all aggrieved employees who were required to pay for any business expenses incurred for SUNRISE's benefit, including, but not limited to, costs of travel expenses, mileage, mobile device expenses, supply and equipment expenses, and uniform maintenance and replacement costs, as required by Labor Code section 2802.

6. SUNRISE shall pay accrued legal interest to Ms. Sanchez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. SUNRISE shall provide Ms. Sanchez and all aggrieved employees employed by SUNRISE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. SUNRISE shall pay Ms. Sanchez and all aggrieved employees the full amount of all gratuities owed to them as indicated on customers' credit card slips, without any deductions for any credit card payment processing fees or costs, as set forth in Labor Code section 351.

9. SUNRISE shall reimburse Ms. Sanchez and all aggrieved employees for their costs and expenses incurred as a result of SUNSET's conduct of compelling and/or coercing Ms. Sanchez and other aggrieved employees to purchase goods, services, or anything of value, in violation of California Labor Code section 450.

10. SUNRISE shall provide Ms. Sanchez and all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.

11. SUNRISE shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.

12. SUNRISE shall implement and provide suitable seating to all aggrieved employees.

13. SUNRISE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

14. SUNRISE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

15. SUNRISE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

Sairah Budhwani

Copy: SUNRISE RESTAURANTS, LLC (via U.S. Certified Mail); W.K.S. RESTAURANT CORPORATION (via U.S. Certified Mail); W.K.S. SUNRISE HOLDINGS, LLC (via U.S. Certified Mail)

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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

W.K.S. SUNRISE HOLDINGS, LLC
5856 CORPORATE AVENUE, SUITE 200
CYPRESS, CA 90630

9590 9402 6817 1074 4603 34

2. Article Number *(Transfer from service label)*

7021 1970 0001 3865 2934

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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