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Via Online Filing with the LWDA & by Certified Mail to Defendants

Desert Jack, LLC
15401 Anacapa Road
Victorville, CA 92392

Envision Foods, LLC
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JIB Holdings I, LLC
15401 Anacapa Road
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TNH Partners, LLC
15401 Anacapa Road
Victorville, CA 92392

Allied Restaurant Management, LLC
15401 Anacapa Road
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ENV Management, LLC
15401 Anacapa Road
Victorville, CA 92392

Re: Jason Holmes vs. Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC - California Labor Code §2699 Penalties

Gentlepersons:

This firm represents Jason Holmes, Employee Number 532667, (“Plaintiff” or “Mr. Holmes”) and a proposed group of current and former employees working for Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC, (“Defendants”) in California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and IWC Wage Order No. 5-2001.

- (1) all non-exempt, hourly employees who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California at any point from January 19, 2021 and continuing into the present. (“Non-Exempt Aggrieved Employees”);

- (2) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from January 19, 2021 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (3) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period where they also received either piece rate compensation, an incentive payment, shift differential, non-discretionary bonuses (including but not limited to for working a large number of hours or so called excess hour bonuses), production bonuses, and efficiency bonuses from January 19, 2021 and continuing into the present. (“Incentive Payment Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the “Overtime Aggrieved Employees.”

- (4) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from January 19, 2021 and continuing into the present. (“First Meal Period Aggrieved Employees”);
- (5) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor,

merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from January 19, 2021 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups four (4) and five (5) may be referred to as the “Meal Period Aggrieved Employees.”

- (6) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from January 19, 2021 and continuing into the present. (“Rest Period Aggrieved Employee”);
- (7) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more evening or graveyard shifts—defined as including any time worked after 10:00 pm and/or shifts that started at 10:00 pm from January 19, 2021 and continuing into the present. (“Graveyard Aggrieved Employee”);
- (8) all non-exempt, hourly employees who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California as a Shift Manager or Assistant Manager, or hourly Manager of any kind at any point between January 19, 2021 and continuing into the present. (“Manager Aggrieved Employees”);
- (9) all non-exempt, hourly employees who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN

Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities in California as a cook at any point between January 19, 2021 and continuing into the present. (“Cook Aggrieved Employees”);

- (10) all individuals who were employed by Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC and/or other entities doing business as or related to Defendants Desert Jack, LLC, Envision Foods, LLC, JIB Holdings I, LLC, THN Partners, LLC, Allied Restaurant Management, LLC, and ENV Management, LLC or their predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between January 19, 2021 and continuing into the present. (“Late Payment Aggrieved Employees”);

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to our client and all aggrieved employees.¹ Specifically, Plaintiff contends that Defendants: 1) required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform work off-the-clock without compensation including, but not limited to, the time associated with temperature checks, off-the-clock phone calls, reviewing and responding to off-the-clock text messages, picking up supplies for Defendants’ stores, and transferring supplies between Defendants’ stores; 2) failed to pay overtime wages including by failing to pay for all hours worked that should have been classified as overtime hours, misclassifying overtime hours as regular hours in part by failing to record all hours worked, and by failing to include non-discretionary bonuses and incentive payments including, but not limited “excess hours worked” bonuses when calculating and paying overtime wages, and failing to pay doubletime wages for hours worked in excess of twelve (12) in a day; 3) failed to provide lawful meal periods including by failing to permit employees who worked graveyard shifts (after 10:00 pm) to go outside during their meal periods, failed to provide adequate staffing including a sufficient number of assistant managers, shift managers, or cooks to permit the aggrieved employees to take a meal period; 4) failed to provide lawful rest periods including by failing to permit employees who worked graveyard shifts (after 10:00 pm) to go outside during their meal periods, failed to provide adequate staffing including a sufficient number of assistant managers, shift managers, or cooks to permit the aggrieved employees to take a lawful rest period, and interrupted their rest periods; 5) failed to provide accurate itemized wage statements including by not properly itemizing or including the total hours worked among other issues; 6) failed to timely

¹ See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

pay wages during and after employment; 7) failed to maintain accurate time records (Labor Code sections 1174 and 1174.5), 8) failed to reimburse the aggrieved employees for expenses reasonably incurred within the discharge of their duties including mileage on some occasions and for requiring employees to use cell phones and/or other electronic communication devices in the discharge of their duties.

DEFENDANTS AT ALL RELEVANT TIMES HERETO WERE EMPLOYERS, OTHER PERSONS ACTING ON BEHALF OF EMPLOYERS, JOINT EMPLOYERS AND/OR OPERATED AS A SINGLE ENTERPRISE

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs*, 49 Cal.4th 35, 65 (2010). As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

In addition, California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. *Hasso v. Hapke*, 227 Cal. App. 4th 107, 155 (2014); *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 512 (2010). The single enterprise rule applies where “there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.” *Hasso*, 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

To determine whether the single enterprise rule applies, the court must evaluate whether “(1) there is such a unity of interest and ownership that the individuality, or separateness, of the said person and corporation has ceased,” and (2) ‘an adherence to the fiction of the separate existence of the corporation would ... sanction a fraud or promote injustice.” *Sonora Diamond Corp v. Sup. Ct*, 83 Cal. App. 4th 523, 538-539 (2000).

When determining whether a unity of interest and ownership exists, courts may consider factors including disregard of corporate formalities, lack of segregation of corporate records, use of the same office or business location, the use of the corporate entity to procure labor for another entity, contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, and sharing employees between the entities. *Zoran Corp. v. Chen*, 185 Cal.App.4th 799, 811–812 (2010); *Sonora Diamond Corp*, 83 Cal. App. 4th at 538-539; *Tomaselli v. Transamerica Ins. Co.*, 25 Cal.App.4th 1269, 1285 (1994).

At all times relevant hereto, Defendants have operated as a single entity and/or enterprise that either directly and/or jointly employed all aggrieved employees. Plaintiff contends that he worked for

each of Defendants through their capacity as joint employers, single enterprises, and alter egos for each other.

Defendants also share common ownership and share a common corporate headquarters at 15401 Anacapa Road, Victorville, CA 92392.

Moreover, at all times throughout their employment, Plaintiff and all aggrieved employees were regularly and consistently subject to the common policies utilized by Defendants. This includes the employee handbooks that were issued to Plaintiff and all aggrieved employees. Moreover, at all times herein, Plaintiff and all aggrieved employees were subject to the same common control and compensation policies of Defendants.

Accordingly, all Defendants engaged, suffered and permitted Plaintiff and all aggrieved employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff and all aggrieved employees at all relevant times herein, so as to be considered the joint employers of all of the aggrieved employees. By reason of their status as joint employers, they are each liable for civil penalties for violation of the California Labor Code as to Complainant and other aggrieved employees as set forth herein.

DEFENDANTS VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1, 1198 AND IWC WAGE ORDER NO. 5-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 5-2001 obligates employers to pay each employee minimum wages for all hours worked.

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those

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

Similarly, Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Defendants required and/or expected Plaintiff, the Non-Exempt aggrieved employees, Manager Aggrieved Employees, and all aggrieved employees to regularly review and respond to work related communications during and after hours related to issues at the Defendants locations, time records, job conditions, tasks, and other job related communications on their own personal electronic devices—including, but not necessarily limited to their cell phones in the normal course of their job duties.

Moreover, it was expected and known that employees would incur expenses and be suffered or permitted to expend time on reviewing and acting in accordance with the text messages sent to Plaintiff and the other aggrieved employees. Defendants also expected Plaintiff and the other aggrieved employees to answer phone calls while at home and failed to provide either compensation for the calls nor expense reimbursement for the use of employees’ own personal devices. As such, Plaintiff and the other aggrieved employees were required and/or expected to use their personal cell phones in the discharge of their job duties. Defendants’ conduct in requiring Plaintiff and the other aggrieved employees to use their cell phones to obtain their schedules and/or job assignments caused them to incur losses as a direct consequence of their duties.

Although Plaintiff and the other aggrieved employees were regularly required to and/or ordered/directed to use their own personal electronic devices—including, but not limited to cell phones—for work purposes, Plaintiff and the other aggrieved employees were not provided with any reimbursement for the use of their personal electronic devices. California law prohibits an employer from failing to reimburse employees from losses incurred through the use of their own electronic devices even if the use would not cause the employee to exceed their data limit. See *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) (“We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

Moreover, even assuming *arguendo* Plaintiff and the other aggrieved employees were not required to use their cell phone—which they indisputably were—Defendants also suffered and permitted Plaintiff and the other aggrieved employees to perform work while reviewing and acting

in accordance with the instructions they received on a frequent basis via text message or by calling them while they were off-the-clock. *Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours and sometimes included hours worked in excess of twelve (12) hours for which they were entitled to doubletime compensation under Labor Code § 510.

Through Defendants' policy and practice of not paying Plaintiff and the other aggrieved employees for the time expended reviewing text messages with job assignment information and/or other job related communications within the discharge of their duties and requiring them to take and respond to off-the-clock calls, Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198 and 2802. Moreover, as set forth in *Troester*, Defendants either can and/or should have recorded the time spent by its non-exempt hourly employees on the use of the and compensated Plaintiff and the aggrieved employees for such time. *See also Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 81 (2021) ("It is the employer's duty to maintain accurate time records"). As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §§ 11510, 558, 1194, 1197, 1197.1, 1198 and 2802 with respect to Plaintiff and the aggrieved employees.

Defendants also engaged in a common policy and practice since the onset of the COVID-19 pandemic of requiring Plaintiff and the aggrieved employees to undergo temperature checks while off-the-clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510.

Defendants conduct in failing to pay Plaintiff and the aggrieved employees for such time was willful. The Department of Industrial Relations issued guidance on July 28, 2020 advising that employers that they must compensate employees for the time associated with medical checks before shifts (including temperature checks):

Medical Checks

9. Q: Must my employer pay me for time spent at my employer's worksite completing certain medical checks (including temperature checks) before beginning a shift?

A: Yes. Employers must pay workers for all "hours worked," including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term “hours worked” means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request, and thus under the control, of the employer.

10. Q: Is my employer required to pay workers for required medical checks (including temperature checks) at the employer’s worksite, even if the medical checks take very little time?

A: Yes, an employer is required to compensate for all hours worked in California even if a required task takes only a small amount of time. There is no “de minimis” rule under California law. Therefore, if an employer requires medical checks (such as a temperature check) at the employer’s worksite, the employer must compensate a worker for that time worked, even if the temperature check takes only a small amount of time to complete and record.

Defendants required Plaintiff and the aggrieved employees to undergo temperature checks before starting their shifts for which no compensation was provided. Such time was not *de minimis*. Labor Code section 1194, 1197, 1197.1, and 1198.

Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, included overtime hours for which they received no compensation in violation of Labor Code § 510. Further, since on some occasions Plaintiff and the other aggrieved employees had already worked twelve (12) hours, Defendants also failed to pay the aggrieved employees double time wages and/or misclassified their doubletime wages as merely overtime wages.

Separate and independent of the foregoing, Defendants also failed to include additional compensation other than Plaintiff and the other aggrieved employees’ base rate, when calculating and paying overtime and double time wages. For instance, Defendants failed to include incentive payments, shift differentials, non-discretionary bonuses (including but not limited to for working a large number of hours or so called excess hour bonuses and/or other non-discretionary bonuses tied to the number of hours worked), production bonuses, and efficiency bonuses when calculating and paying overtime and doubletime wages in violation of Labor Code § 510.

Defendants also failed to pay Plaintiff and the other aggrieved employees who worked shifts at multiple locations in the same day for all hours worked due, in part, to defects in its timekeeping

systems that would not allow them to clock-in among other issues.

Plaintiff and the other aggrieved employees were also required to pick up supplies from Defendants' stores or to transfer supplies between Defendants' various stores without compensation. In addition to not even paying minimum wages for such hours worked, Defendants' failure to record these hours led to the misclassification of regular hours as overtime hours and also included hours worked in excess of eight (8) in a day and/or forty (40) hours in a week.

Based upon the foregoing, Defendants violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...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 in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)

minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); see also *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*,

supra, 53 Cal.4th at 1048–1049.² The California Supreme Court recently held in *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more. On these occasions, the employees did not know that they were entitled to take a timely meal period at the fifth hour and in fact were told that they were not. Accordingly, on such occasions the aggrieved employees were denied an opportunity to take a timely first meal period. *Carrington*, 30 Cal. App. 5th at 528.

Here, Defendants failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, and failed to authorize and permit them to take timely first meal periods. Defendants’ meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. Defendants also expressly prohibited Plaintiff and the other aggrieved employees from going outside during their meal periods when working past 10:00 pm including, but not limited to, employees assigned to work the graveyard shift.

Defendants also maintained a policy and practice of not permitting Plaintiff and aggrieved employees who worked as hourly shift managers, hourly assistant managers, or other similar

² Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13–0056–DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

positions from taking a meal period. Under Defendants' unlawful meal period policies and practices chefs, assistant managers, and shift managers were required to remain on the premises as Defendants did not permit any of its stores to be without any employee capable of handling the cooking responsibilities or a manager at any point. On many such occasions, Defendants only had two employees present on the premises at the time such that it was not possible for Plaintiff or the other aggrieved employees to take a lawful meal period. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods altogether due to a lack of sufficient coverage.

Defendants also interrupted Plaintiff and the other aggrieved employees' meal periods in violation of Labor Code §§ 226.7 and 512.

Similarly, IWC Wage Order No. 5-2001, prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001. Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Plaintiff and the aggrieved employees were also not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal or rest period. This includes instances when Plaintiff and the other aggrieved employees were not provided with lawful timely first meal periods and/or second meal periods. Defendants also improperly rounded meal period punches and failed to provide meal period premiums on such occasions.

Defendants also knew that it was regularly and consistently failing to provide Plaintiff and the aggrieved employees who worked on graveyard shifts or after 10:00 pm with meal periods. In fact, Defendants even set up a paycode specific to graveyard meal period premiums called "GraveyardMeal" evidencing that it did not intend to provide Plaintiff and the other aggrieved employees who worked graveyard shifts with proper meal periods. However, the California Supreme Court has held that regardless of whether or not Defendants paid a meal period premium when such violations occurred, the State of California remains entitled to collect penalties for Defendants' violation of Labor Code section 512 and the IWC Wage Order's meal/rest period requirements consistent with Labor Code section 226.7. *See e.g. Kim v. Reins International California, Inc.*, 9 Cal.5th 73, 84 (2020) ("employers can pay an additional hour of wages as a

remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” nor preclude the imposition of PAGA penalties) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53 Cal.4th 1244, 1256 (2012)).

Further, on the rare occasion, if any, that Defendants paid a meal period premium, Defendants had a common policy and practice of failing to include compensation associated with incentive payments, non-discretionary bonuses (including bonuses related to the number of hours worked), production bonuses, efficiency bonuses, attendance bonuses, shift differentials, and other non-discretionary income aside from the aggrieved employees’ hourly base rates when calculating and paying meal period premiums. Instead of paying meal/rest period premiums at employees’ regular rates, on the occasions that Plaintiff and the other aggrieved employees received a meal period premium, Defendants improperly paid the premium at their hourly base rate instead of at their regular rate. Plaintiff contends that Defendants’ policies and practices as alleged above violated Labor Code § 226.7 and seeks penalties pursuant to PAGA related thereto consistent with the California Supreme Court’s decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold that the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning of regular rate of pay’ in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.”).

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all Meal Period Aggrieved Employees. As such, Plaintiff and the other aggrieved employees are entitled to penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...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 in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 5-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest

periods for every major fraction of four hours worked. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273.

In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273; accord *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal.App.4th 220, 236 (2013) (“There does not appear to be an on-duty rest break exception as there is for meal breaks.”); *Wright vs. Renzenberger, Inc.*, Case No. 2:13-cv-06642-FMO-AGR, Dkt. 118 (C.D. Cal. Mar. 8, 2018) (holding that requiring employees to stay in near proximity of the vans violated California’s rest period laws).

The California Supreme Court’s ruling in *Augustus* follows the clear directive in *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975 (1995) that “[w]hen an employer directs, commands or restrains an employees from leaving the work place...and thus prevents the employee from using the time effectively for his or her own purposes, that employees remains subject to the employer’s control. *Augustus*, 2 Cal.5th at 275 (citing *Bono*, 32 Cal. App. 4th at 975). “Restricting employees to the employer’s premises, or worksite, means that the employee is subject to the employer’s control so as to constitute hours worked.” DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000). Specifically, in *Morillion*, the California Supreme Court rejected the employer’s argument that employees “were not under its control during the required bus ride because they could read on the bus, or perform other personal activities.” *Id.* at 586. The court explained that “[p]ermitting plaintiffs to engage in limited activities such as reading or sleeping on the bus does not allow them to use “the time effectively for their own purposes...during the bus ride plaintiffs could not drop off their children at school, stop for breakfast before work, or run other errands requiring the use of a car.” *Id.*

Following *Augustus*, the California Labor Commissioner published a memorandum on rest periods wherein it unequivocally stated both that employers cannot require employees to remain on the premises during rest periods and that an employer cannot require an employee to engage in radio communications during a rest period:

5. Q.Can my employer require that I stay on the work premises during my rest period?

A.No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement “obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.” (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 5-2001, Defendants failed to provide Plaintiff and all Rest Period Aggrieved Employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendants regularly and consistently required Plaintiff and the other Rest Period Aggrieved Employees to remain on the premises during their rest periods as part of their common policies and practices. This includes, but is not limited to, not permitting aggrieved employees working the evening and/or overnight shift from taking a rest period at night. On many such occasions the Rest Period Aggrieved Employees were the only employee other than a manager on duty such that it was not possible for Plaintiff or the other Rest Period Aggrieved Employees to take a rest period and/or to leave the premises during rest periods. Defendants also required Plaintiff and the rest period aggrieved employees to sign false employment records indicating that they received a rest period on such shifts and promised them that they could “take it another day.” Such conduct provides clear evidence that Defendants and its supervisory employees knew that Plaintiff and the other aggrieved employees were not receiving lawful rest periods and attempted to cover such conduct up rather than complying with California law.

As discussed above, “[r]estricting employees to the employer’s premises, or worksite, means that the employee is subject to the employer’s control so as to constitute hours worked.” DLSE Manual 45.1.5.1 (2016) at p. 45-3; *Morillion*, 22 Cal.4th 575 (2000) (holding that employees who could were required to remain on a bus and could eat and make phone calls were still subject to the employer’s control). By requiring Plaintiff and the other Rest Period Aggrieved Employees to remain on the premises during rest periods, Defendants continued to exercise control over and restrained their employees from leaving the workplace, engaging in certain specified activities without restriction, and interfered with the right of their employees to take rest periods. For instance, Defendants’ policy and practice had a chilling effect on the ability of employees to make personal phone calls while eating or smoking away from an area that Defendants could not easily monitor and/or their limited their ability to complain about workplace conditions during their breaks. Such conduct violated Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Defendants also maintained a policy and practice of not permitting Plaintiff and aggrieved

employees who worked as hourly shift managers, hourly assistant managers, or other similar positions from taking a lawful rest period. Under Defendants' unlawful rest period policies and practices chefs, assistant managers, and shift managers were required to remain on the premises as Defendants did not permit any of its stores to be without any employee capable of handling the cooking responsibilities or a manager at any point. On many such occasions, Defendants only had two employees present on the premises at the time such that it was not possible for Plaintiff or the other aggrieved employees to take a lawful rest period. Defendants' understaffing policies and practices also pressured, coerced, and forced employees to forgo rest periods.

Defendants also knew that it was regularly and consistently failing to provide Plaintiff and the aggrieved employees who worked on graveyard shifts or after 10:00 pm with proper breaks including rest periods. In fact, Defendant even set up a paycode specific to graveyard meal period premiums called "GraveyardMeal" evidencing that it did not intend to provide Plaintiff and the other aggrieved employees who worked graveyard shifts with proper breaks. While Defendants clearly knew that it was not providing proper breaks during the graveyard shifts, they also made no effort whatsoever to pay rest period premiums.

Defendants also interrupted Plaintiff and the other aggrieved employees' rest periods.

Moreover, Plaintiff and the other aggrieved employees were denied rest periods as a result of Defendants' understaffing practices and policies. This includes, but is not limited to the fact that Plaintiff and many of the Rest Period Aggrieved Employees were the only employee or one of two employees (including often the only non-supervisory employee) assigned to a specific location. Notably, although Defendants' rest period policies and practices are not compliant, they also pressured and coerced employees to forgo rest periods and made it difficult for employees to take lawful duty-free rest periods both due to their understaffing policies and practices and otherwise.

Based upon the foregoing, Defendants violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all aggrieved employees. Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to be violated...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 in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019)

and not any underpaid wages.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226(a), 226(e) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to Defendants' failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

In addition, the wage statements issued to Plaintiff and all aggrieved employees did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 5-2001 which requires employers to record "when the employee begins and ends **each work period**." Instead, Defendants failed to report the time that it knew that Plaintiff and the other aggrieved employees were working while off-the-clock at home, while taking supplies between stores, and picking up supplies for the store. Defendants also failed to report the time associated with uncompensated temperature checks. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code §

226(a)(2).

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). See *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).”).

There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) cf.; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or 2699 penalties for Defendants’ violations of Labor Code § 226(a).

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(a), “Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204 also requires for employees paid on a bi-weekly and/or weekly basis that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages, split shift premiums, meal period premiums, and rest period premiums for the reasons discussed above, Defendants failed to timely pay Plaintiff and all aggrieved employees all

wages owed within the time constraints required by Labor Code § 204 on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendants’ failure to pay Plaintiff all aggrieved employees within the time constraints of Labor Code section 204, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendants failed to pay other aggrieved employees whose employment concluded any wages whatsoever within the time constraints of Labor Code §§ 201-202. Defendants also failed to pay Plaintiff and the aggrieved employees other wages owed, including but not limited to minimum wages and overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’ faulty policies described above, Plaintiff and all aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

DEFENDANTS VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As previously explained, Defendants failed to maintain accurate records of the total hours worked by employees (including, but not limited to, the time associated with temperature/wellness checks, time spent responding to and engaging in after hours calls and communications, and failed to record the time associated with picking up supplies for Defendants or transferring supplies between stores) sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE § 2802

Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Apart from the other reimbursement issues previously discussed, Defendants also failed to provide Plaintiff and the other aggrieved employees with mileage reimbursement for at least some of the PAGA period. Plaintiff and the other aggrieved employees were required to drive between Defendants’ stores and pick-up supplies for the benefit of Defendants without reimbursement. Although Plaintiff and the aggrieved employees were required to incur these expenses on Defendants behalf, Defendants sometimes failed to provide any reimbursement for mileage, gas, or other vehicle related reimbursement. This includes instances where Defendants required Plaintiff and certain aggrieved employees to work parts of their shifts at different locations, but failed to provide reimbursement and/or sufficient reimbursement for travelling between Defendants locations.

Section 9 of the IWC Wage Order No.5-2001, provides that “When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and **maintained by the employer**. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.” (emphasis added). The IWC has found it “reasonable to require employees to maintain uniforms made of fabrics requiring minimal time for care” and that “garment requiring separate laundering because of heavy soil or color and uniforms which need ironing require more than ‘minimal care’ by modern standards, and the employer who requires such uniforms must provide for their maintenance.

Here, Defendants required the aggrieved employees to wear uniform items every shift and to maintain the items in a specific manner. Due to Defendants’ appearance standards and failure to provide the aggrieved employees with an adequate amount of uniforms, aggrieved employees were required to do laundry multiple times per week. Further, due to the nature of the grease stains, the aggrieved employees often were required to wash the items separately from their own causing them to incur additional expenses. Aside from the expense reimbursement, Defendants also failed to

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compensate Plaintiff and the aggrieved employees for the time spent laundering their uniforms for Defendants' benefit.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit and representative action against Defendants.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendant is interested in attempting to resolve this matter on a representative basis, please contact us or have any Counsel you choose to retain contact me so that we can discuss an informal discovery plan.

Very truly yours,

WINSTON LAW GROUP, P.C.

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