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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

03/17/2025

By: A. Gray Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SACRAMENTO

12 EDWARD LEWIS-SHURLAI, as an
13 aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"), on
14 behalf of the State of California and other
non-party Aggrieved Employees,

15 Plaintiff,

16 vs.

17 J. A. SUTHERLAND, INC., a California
18 corporation; and DOES 1 through 10,
inclusive,

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20 Defendants.
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Case No.: 25CV001579

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiff Edward Lewis-Shumlai, as an aggrieved employee and on behalf of the State
2 of California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on January 9, 2025, until judgment (“non-party Aggrieved Employees”).

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

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

28 4. Venue is proper in this Court, because Defendants employ persons within the

County of Sacramento, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least one location within the County of Sacramento, including Defendants’ restaurant in Folsom (2545 Iron Point Road, Folsom, California 95630). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Sacramento County and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

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 Edward Lewis-Shumlai is a resident of Chico, in Butte County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2022 to August 2023 as a Crew Member, and August 2023 to June 2024 as a Shift Lead Supervisor. Plaintiff worked for Defendants as a Cashier at their restaurants in Paradise, California (5859 Clark Road, Paradise, California 95969) and Chico, California (2398 Esplanade, Chico, California 95926). During his employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff’s primary job duties included, without limitation, taking orders from drive-thru and walk-in customers, preparing food, conducting temperature checks on food, checking inventory, and cleaning.

7. J. A. SUTHERLAND, INC. 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 and the State of California.

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

5 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of J. A. SUTHERLAND, INC. at all relevant
7 times.

8 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, J. A. SUTHERLAND,
10 INC. and/or DOES 1 through 10 (collectively, “Defendants” or “SUTHERLAND”), each acting
11 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
12 the other co-Defendants and was acting within the course and scope of such agency,
13 employment, joint venture, or concerted activity with legal authority to act on the others’ behalf.
14 The acts of any and all Defendants were in accordance with, and represent, the official policy
15 of Defendants.

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

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

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 13. Defendants are a franchisee that owns and operates Taco Bell restaurants and has
25 approximately 21 locations in California. Upon information and belief, Defendants maintain a
26 single, centralized Human Resources (“HR”) department at their company headquarters in
27 Ukiah, California, which is responsible for the recruiting and hiring of new employees, and
28 communicating and implementing Defendants’ company-wide policies, including timekeeping

1 policies and meal and rest period policies, to employees throughout California.

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

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

18 16. Defendants continue to employ non-exempt or hourly paid employees in
19 California.

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

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

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

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

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

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

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

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

provided complete and accurate wage statements.

24. 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 California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

25. 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, and/or meal and rest period premiums, within permissible time periods.

26. 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, and/or meal and rest period premiums, within permissible time periods.

27. 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.

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 suitable resting facilities to cease work and recover during meal or rest periods, but failed to provide suitable resting facilities.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive full reimbursement for all business-related expenses and costs they incurred during the
3 course and scope of their employment and that they did not receive full reimbursement of
4 applicable business-related expenses and costs incurred.

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

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

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

22 33. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
23 "any person who was employed by the alleged violator and personally suffered each of the
24 violations alleged."

25 34. Plaintiff and other current and former employees of Defendants are "aggrieved
26 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants' current
27 or former employees and each of the alleged violations were committed against them.

28 35. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved

1 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
2 requirements have been met:

3 (a) The aggrieved employee shall give written notice by online filing
4 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
5 the employer of the specific provisions of the California Labor Code
6 alleged to have been violated, including the facts and theories to support
7 the alleged violations.

8 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).

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

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

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

28 (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.

37. On January 9, 2025, 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-1071989-25. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

38. 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.

39. 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, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

40. 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

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid (2)
3 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid” Labor Code section 558(c)
5 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
7 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
8 himself, all other non-party Aggrieved Employees, and the State of California against
9 Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552, and 1198, and the
10 applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general,
11 does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for
12 violations of Labor Code sections 510, 512(a), 516, 551, 552, and 1198, and the applicable IWC
13 Wage Order.

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

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

20 43. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
21 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
22 interest as a private attorney general, seeks assessment and collection of civil penalties and
23 injunctive relief for himself, all other non-party Aggrieved Employees, and the State of
24 California against Defendants for violations of California Labor Code sections 201, 202, 204,
25 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
26 2810.5.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 551, 552, 1174(d), and
9 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
10 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
11 including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 2802, and 2810.5.

12 46. Defendants’ conduct, as alleged herein, violates numerous sections of the
13 California Labor Code, including, but not limited to, the following:

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

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

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

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

below;

- (e) 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;
- (f) 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;
- (g) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (i) 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;
- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) 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

47. 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

1 shall be the . . . standard conditions of labor for employees. The employment of any employee
2 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

17 51. California Labor Code section 510 codifies the right to overtime compensation
18 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
19 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
20 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
21 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
22 the seventh (7th) day of work.

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

1 53. First, upon information and belief, Defendants had, and continue to have, a
2 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
3 party Aggrieved Employees from recording hours worked that were outside of their scheduled
4 shifts, in order to limit the amount of overtime employees could accrue. On information and
5 belief, this limitation on overtime accrual was based on a company-wide policy of staffing
6 restaurant locations strictly based on the labor hours or labor budget set by the corporate office.
7 This policy of limiting overtime, coupled with Defendants' practices and/or policies of
8 understaffing, including single-staffing, and assigning heavy workloads (*see infra*), led Plaintiff
9 and other non-party Aggrieved Employees to work off-the-clock before and after their
10 scheduled shift times in order to complete assigned tasks.

11 54. For example, when Plaintiff worked the opening shift, he had to arrive about 15
12 minutes before his scheduled shift start-time to get the restaurant ready for customers, such as
13 making sure the drive-thru menu displayed breakfast items; checking the building perimeter and
14 parking lot for security concerns; unlocking the front doors and disabling the alarm; turning on
15 the lights, grill, fryer, and steamer; and, occasionally, cleaning the restroom. However, Plaintiff
16 was instructed by management not to clock in until his scheduled shift start-time to limit the
17 overtime hours he accrued. As a further example, after clocking out at the end of his shift,
18 Plaintiff often had to attend to outstanding duties before he could leave, such as speaking with
19 management, taking out the trash, assisting customers and other employees, and taking pictures
20 of the cleanliness of the restaurant to send to managers. This off-the-clock work could have
21 been recorded by Defendants, but they refused to do so to avoid payment of additional wages
22 to Plaintiff and other non-party Aggrieved Employees. Thus, Defendants failed to track all of
23 the time that employees spent performing work-related tasks before and after their shifts, and
24 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

25 55. Second, during the relevant time period, Defendants' timekeeping system was
26 integrated with the company's point-of-sale ("POS") system and only two (2) monitors were
27 available for clocking in and out. Plaintiff and other non-party Aggrieved Employees would
28 sometimes have to wait to clock in for the start of their shifts because other employees were

1 using the POS system to handle customer transactions and/or clocking in or out. For instance,
2 Plaintiff was sometimes required to wait several minutes off-the-clock and under Defendants'
3 control until a POS monitor was available for clocking-in. Thus, Plaintiff and other non-party
4 Aggrieved Employees performed work that was not recorded, time for which they were not
5 paid.

6 56. Third, as stated, on information and belief, Defendants had, and continue to have,
7 a company-wide policy and/or practice of strictly staffing their restaurant locations based on the
8 labor hours allocated by each location's labor or payroll budget set by the corporate office.
9 Defendants' uniform use of labor budgeting resulted in chronic understaffing, such there were
10 too few employees on duty to handle the workload and attend to customers. Also, Defendants
11 have systematically, and on a company-wide basis, understaffed their restaurants by adopting a
12 single-staffing model for some positions, including, but not limited to, Shift Lead Supervisors,
13 whereby only one (1) Shift Lead Supervisor employee was scheduled to work at certain times,
14 thereby failing to provide adequate meal period coverage to permit those employees to take
15 compliant meal periods. Defendants also had a practice of failing to schedule meal periods,
16 which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
17 their duties for compliant meal periods. For example, Plaintiff's meal periods were regularly
18 interrupted to assist employees and customers, due to the lack of coverage. However,
19 Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the time
20 they spent working off the clock during unpaid meal periods.

21 57. Fourth, Defendants' company-wide timekeeping system prevented Plaintiff and
22 other non-party Aggrieved Employees from recording all hours worked when their meal periods
23 were shortened or interrupted, because the system locked out Plaintiff and other non-party
24 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
25 clock back in from a meal period before 30 minutes had elapsed. Thus, Defendants did not
26 record all hours worked during meal periods, and Plaintiff and other non-party Aggrieved
27 Employees performed work during meal periods for which they were not paid.

28 58. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
2 their assigned duties off-the-clock outside of their shifts and during meal periods, and were
3 suffered or permitted to perform work for which they were not paid. Because Plaintiff and other
4 non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or forty (40)
5 hours a week or more, some of this off-the-clock work qualified for overtime premium pay.
6 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
7 for all of the overtime hours they actually worked.

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

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 60. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
17 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
18 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
19 an employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8,
21 § 11050(2)(M) (defining "Hours Worked").

22 61. First, as stated above, due to Defendants' company-wide policies and/or practices
23 of limiting the amount of overtime employees could accrue pursuant to their labor budget
24 practices, understaffing, and assigning heavy workloads, Defendants required Plaintiff and
25 other non-party Aggrieved Employees to perform work off-the-clock before and after their
26 shifts. As stated, Plaintiff and other non-party Aggrieved Employees were required to perform
27 opening duties, speak with management, take out the trash, assist customers and other
28 employees, document the cleanliness of the restaurant, and/or wait for an available POS monitor

1 to clock in for the start of their shifts, but were not compensated for this time.

2 62. Second, as also stated above, due to Defendants' company-wide practices of
3 utilizing labor budgets, understaffing and/or single-staffing certain positions, assigning heavy
4 workloads, failing to adhere to a schedule for meal periods, and subsequent lack of meal period
5 coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all
6 uninterrupted meal periods to which they were entitled and were required to work during their
7 meal periods, time for which they were not paid. Additionally, as stated, Defendants' company-
8 wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
9 entering time worked during meal periods because the system locked out Plaintiff and other
10 non-party Aggrieved Employees for a full 30 minutes. Thus, Defendants systematically failed
11 to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
12 unpaid meal periods because these hours were not always correctly recorded.

13 63. Defendants did not pay minimum wages for all hours worked by Plaintiff and
14 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
15 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
16 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
17 1197, and 1198.

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

22 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

27 66. At all relevant times herein set forth, California Labor Code section 512(a)
28 provides that an employer may not require, cause, or permit an employee to work for a period

1 of more than five (5) hours per day without providing the employee with a meal period of not
2 less than thirty (30) minutes, except that if the total work period per day of the employee is not
3 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
4 and the employee. Under California law, first meal periods must start after no more than five
5 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

6 67. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

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

15 69. First, during the relevant time period, Defendants had, and continue to have, a
16 company-wide policy and/or practice of understaffing and/or single-staffing certain positions
17 due to labor budgeting and/or limited payroll allocation, which, combined with the assignment
18 of heavy workloads and failure to adhere to a schedule for meal periods, resulted in a lack of
19 meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from
20 taking all timely, uninterrupted meal periods to which they were entitled. For example, as
21 stated, Plaintiff's meal periods were regularly interrupted to assist employees and customers,
22 due to the lack of other employees' availability to provide coverage. For the same reasons,
23 Plaintiff had to take his meal periods late, after the fifth hour of work, about twice per month,
24 or would sometimes miss his meal periods. Thus, Plaintiff and other non-party Aggrieved
25 Employees had to work through all or part of their meal periods, had their meal periods
26 interrupted, and/or had to wait extended periods of time before taking meal periods.

27 70. Second, as stated, Defendants' company-wide timekeeping system prevented
28 Plaintiff and other non-party Aggrieved Employees from recording when their meal periods

1 were shortened or interrupted, because the system locked out Plaintiff and other non-party
2 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
3 clock back in from a meal period before 30 minutes had elapsed.

4 71. Third, Plaintiff and other non-party Aggrieved Employees worked shifts in
5 excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For
6 example, during his employment, Plaintiff sometimes worked shifts in excess of ten (10) or
7 more hours per day, but was not always provided a second 30-minute meal period. Plaintiff and
8 other non-party Aggrieved Employees did not sign valid meal period waivers on days that they
9 were entitled to meal periods and were not relieved of all duties.

10 72. Fourth, Defendants had a company-wide policy of requiring all employees to
11 sign blanket meal period waivers. Defendants took the position that non-exempt, hourly paid
12 employees had waived their rights to first and/or second meal periods for the entirety of their
13 employment and, on that basis, did not provide them with all meal periods to which they were
14 entitled. Furthermore, Defendants' "Meal Period Waiver Agreement" and "Second Meal Period
15 Waiver Agreement" require employees to provide written notice should they wish to revoke the
16 waiver. Defendants' presumption that meal periods would not be provided for shifts in excess
17 of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less
18 than twelve (12) hours, due to blanket meal period waivers, and imposition on employees to
19 revoke the waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
20 Employees from taking all meal periods to which they were entitled.

21 73. Furthermore, an employer's obligation to provide a meal period is only
22 "triggered" when the employer "employs an employee for a work period of more than five hours
23 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
24 work for a full five hours, its meal break obligation is triggered.").

25 [A]fter the meal break obligation is triggered . . . an employer is put to
26 a choice: it must (1) afford an off-duty meal period; (2) consent to a
27 mutually agreed-upon waiver if one hour or less will end the shift; or
28 (3) obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

1 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
2 require employees to sign meal period waivers in advance (as opposed to on a specific work
3 day) renders them invalid and unenforceable, because Defendants' obligation to provide
4 employees with meal periods did not arise until they had employed them for a full five (5) hours.

5 74. At all times herein mentioned, Defendants knew or should have known that, as a
6 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from
7 being relieved of all duties and required to perform some of their assigned duties during meal
8 periods. Defendants further knew or should have known that Defendants did not pay Plaintiff
9 and other non-party Aggrieved Employees meal period premiums when meal periods were
10 missed, shortened, interrupted, and/or late.

11 75. Moreover, Defendants engaged in a company-wide practice and/or policy of not
12 paying meal period premiums owed when compliant meal periods are not provided. Because
13 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
14 received premium pay for missed, late, and interrupted meal periods. As a result, Defendants
15 failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods in
16 violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full
17 meal period premiums due.

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

22 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

23 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

27 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
28 employer shall authorize and permit all employees to take rest periods, which insofar as

1 practicable shall be in the middle of each work period” and that the “rest period time shall be
2 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
3 hours or major fraction thereof” unless the total daily work time is less than three and one-half
4 (3 ½) hours.

5 79. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC. To comply with its obligation to authorize and permit rest periods
8 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
9 must “relinquish any control over how employees spend their break time, and relieve their
10 employees of all duties—including the obligation that an employee remain on call. A rest
11 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
12 257, 273 (2016).

13 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
14 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
15 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
16 required rest period was not authorized and permitted.

17 81. During the relevant time period, Defendants regularly failed to authorize and
18 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
19 per each four (4) hour period worked or major fraction thereof. As with meal periods,
20 Defendants’ company-wide policies and practices, including labor budgeting and/or limited
21 payroll allocation, understaffing and/or single-staffing certain positions, and assigning heavy
22 workloads, prevented Plaintiff and other non-party Aggrieved Employees from being able to
23 take rest periods. Defendants also failed to adhere to a schedule for rest periods, which, coupled
24 with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and
25 other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

26 82. Furthermore, on information and belief, during the relevant time period,
27 Defendants maintained a company-wide on-premises rest period policy, which effectively
28 required that Plaintiff and other non-party Aggrieved Employees remain on the work premises

1 during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were
2 restricted from leaving the premises during rest periods, they were denied the ability to use their
3 rest periods freely for their own purposes, such as running personal errands. Thus, Defendants
4 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
5 rest periods.

6 83. As a result of Defendants' practices and policies, Plaintiff and other non-party
7 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
8 of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For
9 example, Plaintiff had to work through his rest periods or had his rest periods interrupted to
10 assist other employees and customers, due to heavy workload, and because he had no coverage.

11 84. Defendants have also engaged in a company-wide practice and/or policy of not
12 paying rest period premiums owed when compliant rest periods are not authorized and
13 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
14 Employees have not received premium pay for all missed rest periods. As a result, Defendants
15 denied Plaintiff and other non-party Aggrieved Employees rest periods and failed to pay them
16 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable
17 IWC Wage Order.

18 85. Defendants' conduct violates the applicable IWC Wage Order and California
19 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
20 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
21 2699(a), (f), and (k).

22 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

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

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

1 87. At all relevant times, Defendants have knowingly and intentionally provided
2 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
3 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
4 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours
5 worked; net wages earned; and all applicable hourly rates in effect during the pay period,
6 including rates of pay for overtime wages, and the corresponding number of hours worked at
7 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and
8 226(a)(9).

9 88. Because Defendants did not record the time Plaintiff and other non-party
10 Aggrieved Employees spent working off the clock and deducted time from their records for
11 meal periods that were interrupted and/or missed (and therefore time for which they should have
12 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
13 Plaintiff and other non-party Aggrieved Employees in compliance with sections 226(a)(1) and
14 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
15 worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2),
16 and failed to list the applicable hourly rates of pay in effect during the pay period and the
17 corresponding accurate number of hours worked at each hourly rate, in violation of section
18 226(a)(9).

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

27 90. California Labor Code section 1174(d) provides that “[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
7 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
8 result of failing to record the off-the-clock hours that they worked.

9 91. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
11 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
12 of any employees for longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
14 are required to keep accurate time records showing when the employee begins and ends each
15 work period and meal period. During the relevant time period, Defendants engaged in company-
16 wide practices and/or policies of failing to record actual hours worked, and thereby failed to
17 keep accurate records of work period and meal period start and end times for Plaintiff and other
18 non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of
19 Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with second
20 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
21 and end times for second meal periods.

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

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 93. At all times relevant herein set forth, Labor Code section 204 provides that all
28 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
3 the month during which the labor was performed. Labor Code section 204 further provides that
4 all wages earned by any person in any employment between the sixteenth (16th) and the last
5 day, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
7 month.

8 94. At all times relevant herein, Labor Code section 204 provides that all wages
9 earned for labor in excess of the normal work period shall be paid no later than the payday for
10 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
11 204 provides that the requirements of this section are deemed satisfied by the payment of wages
12 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
13 calendar days following the close of the payroll period.

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

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

20 **FAILURE TO PAY WAGES UPON TERMINATION**

21 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

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

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

12 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**
13 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

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

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

21 102. During the relevant time period, on information and belief, Defendants scheduled
22 Plaintiff and other non-party Aggrieved Employees to work six (6) or more hours per day and
23 seven (7) consecutive days in a workweek. Because Plaintiff and other non-party Aggrieved
24 Employees worked over 30 hours per week and over six (6) hours per day in any one day in a
25 workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff
26 and other non-party Aggrieved Employees may have signed purported waivers of their right to
27 a day's rest in seven, such waivers are invalid.

28 103. Thus, during the relevant time period, and in violation of California Labor Code

1 sections 551 and 552, Defendants caused Plaintiff and other non-party Aggrieved Employees to
2 work more than six days in seven. Plaintiff and other non-party Aggrieved Employees are
3 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
4 (f), and (k).

5 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS, TITLE 8, SECTION 11050(13)(B)**

8 104. At all relevant times herein, California Labor Code section 1198 makes it illegal
9 to employ an employee under conditions of labor that are prohibited by the applicable wage
10 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
11 fixed by the commission shall be the . . . standard conditions of labor for employees. The
12 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”
13 California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting
14 facilities shall be provided in an area separate from the toilet rooms and shall be available to
15 employees during work hours.”

16 105. Defendants’ California restaurants are generally similar in their layout and
17 design and there was, and continues to be, space that allows for a resting facility that employees
18 may use to cease work and recover during meal or rest periods. Defendants could have provided
19 Plaintiff and other non-party Aggrieved Employees with a resting facility within all of their
20 restaurants, with reasonable or no modification, but instead denied, and continue to deny,
21 employees suitable areas to rest (e.g., a breakroom with seats). As a result, Plaintiff and other
22 non-party Aggrieved Employees were forced to adjust to areas not conducive to resting or
23 search for areas outside of the restaurant which are not designated or reserved for their rest,
24 such as their personal vehicles.

25 106. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
26 with suitable resting facilities during their work hours, particularly during meal or rest periods.
27 In other words, during the times when Plaintiff and other non-party Aggrieved Employees were
28 legally allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied

1 them any area within their restaurants to cease work and recover. Moreover, Defendants did
2 not inform Plaintiff and other non-party Aggrieved Employees of their rights to suitable resting
3 facilities under California law.

4 107. As a result of Defendants' company-wide policy and/or practice of denying
5 employees any area to rest within their restaurants and company-wide failure to provide resting
6 facilities in their restaurants, Plaintiff and other non-party Aggrieved Employees were forced to
7 adjust to areas not conducive to resting or search for facilities outside their restaurants to cease
8 work and recover. Defendants' failure to provide suitable resting facilities to Plaintiff and other
9 non-party Aggrieved Employees violates California Labor Code section 1198 and IWC Wage
10 Order No. 5-2001, subdivision 13(B).

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

13 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

14 **VIOLATION OF LABOR CODE SECTION 2802**

15 109. At all times herein set forth, California Labor Code section 2802 provides that
16 an employer must reimburse employees for all necessary expenditures and losses incurred by
17 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
18 to prevent employers from passing off their cost of doing business and operating expenses on
19 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
20 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
21 or equipment are required by the employer or are necessary to the performance of a job, such
22 tools and equipment shall be provided and maintained by the employer, except that an employee
23 whose wages are at least two (2) times the minimum wage provided herein may be required to
24 provide and maintain hand tools and equipment customarily required by the trade or craft."
25 IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the
26 employer to be worn by the employee as a condition of employment, such uniforms shall be
27 provided and maintained by the employer."

28 110. First, during the relevant time period, Defendants, on a company-wide basis,

1 required Plaintiff and other non-party Aggrieved Employees to use their personal mobile
2 devices, including, but not limited to, cellular phones and/or mobile data to carry out their job
3 duties, but failed to reimburse them for the costs of their work-related mobile device expenses.
4 For example, Plaintiff and other non-party Aggrieved Employees were required to use their
5 personal mobile devices and mobile data for work-related tasks, including responding to text
6 messages from management and co-workers, taking and sending pictures of the restaurant to
7 management, and downloading and using a wireless printing application to print documents.
8 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
9 their personal mobile devices and/or mobile data to carry out their work-related responsibilities,
10 Defendants failed to reimburse them for these costs.

11 111. Second, Defendants had a company-wide policy of requiring Plaintiff and other
12 non-party Aggrieved Employees to utilize their own personal vehicles to carry out company
13 business, but failed to reimburse them for all costs of travel, including mileage. For example,
14 Plaintiff was required to drive to the bank to get change for the cash registers and to Defendants'
15 other restaurant locations to pick up ingredients and other restaurant supplies. Although
16 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their own
17 vehicles to carry out their work-related responsibilities, Defendants did not reimburse them for
18 their travel expenses.

19 112. Third, during the relevant time period, Defendants required Plaintiff and other
20 non-party Aggrieved Employees to purchase supplies that were necessary for the completion of
21 their work-related duties. For example, during his employment, Plaintiff spent about \$10 to
22 purchase markers because Defendants failed to provide him with these supplies, which were
23 necessary for the workplace to operate properly and/or meet management's expectations.
24 Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase
25 and use their own supplies in the performance of their duties, they did not reimburse them for
26 these expenses.

27 113. Fourth, during the relevant time period, Defendants expected Plaintiff and other
28 non-party Aggrieved Employees to report to work in clean and presentable uniforms bearing

1 the Taco Bell logo, including uniform shirts and hats. Due to the nature of restaurant work,
2 Plaintiff's and other non-party Aggrieved Employees' uniform items would become stained
3 with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix
4 these clothes in with other laundry. In addition, Defendants did not provide their employees
5 with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants
6 only provided Plaintiff with two (2) shirts during his employment. Because Defendants failed
7 to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
8 uniform items in relation to their scheduled shifts, Plaintiff and other non-party Aggrieved
9 Employees had to wash their uniforms more frequently than they otherwise do laundry, and
10 incur expenses in doing so. Thus, Defendants failed to maintain the uniforms they required
11 Plaintiff and other non-party Aggrieved Employees to wear during their shifts and forced them
12 to incur the costs of maintaining employee uniforms.

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

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

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1 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
2 **EMPLOYMENT**

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

4 116. At all relevant times herein, California's Wage Theft Prevention Act was enacted
5 to ensure that employers provide employees with basic information material to their
6 employment relationship at the time of hiring, and to ensure that employees are given written
7 and timely notice of any changes to basic information material to their employment. Codified
8 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
9 time of hiring, an employer must provide written notice to employees containing basic and
10 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
11 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
12 any rates for overtime, the regular payday designated by the employer, and any allowances
13 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
14 § 2810.5(a)(1)(A)-(C).

15 117. During the relevant time period, on information and belief, Defendants failed, on
16 a company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved
17 Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
18 (C).

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

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

27 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
28 Defendants, jointly and severally, as follows:

1 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
2 (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for
3 relief to seek a different amount.

4 **As to the First Cause of Action**

5 2. That the Court declare, adjudge, and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and other non-party Aggrieved
7 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
8 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
9 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
10 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
11 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
12 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
13 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage
14 Order (by failing to provide suitable resting facilities); 2802 (by failing to reimburse business
15 expenses); and 2810.5 (by failing to provide written notice of information material to
16 employment);

17 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
18 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202,
19 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
20 2810.5;

21 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
22 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
23 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197,
24 1198, 2802, and 2810.5;

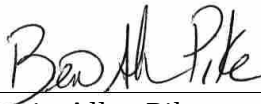
25 5. For attorneys' fees and costs pursuant to California Labor Code section
26 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
27 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12,
28 1194, 1197, 1198, 2802, and 2810.5;

- 1 6. For pre-judgment and post-judgment interest as provided by law; and
2 7. For such other and further relief as the Court may deem equitable and
3 appropriate.

4
5 Dated: March 17, 2025

Respectfully submitted,

6 Capstone Law APC

7 By: 
8 Bevin Allen Pike
9 Daniel S. Jonathan
10 Trisha K. Monesi
11 Shealene P. Mancuso

12 Attorneys for Plaintiff Edward Lewis-Shumlai
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EXHIBIT “1”

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

January 9, 2025

VIA ONLINE SUBMISSION

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

Subject: *Edward Lewis-Shumlai v. J. A. Sutherland, Inc.*

Dear PAGA Administrator:

This office represents Edward Lewis-Shumlai in connection with his claims under the California Labor Code. Mr. Lewis-Shumlai was an employee of J. A. SUTHERLAND, INC. ("SUTHERLAND").

The employer may be contacted directly at the address below:

J. A. SUTHERLAND, INC.
1199 NORTH STATE STREET
UKIAH, CA 95482

Mr. Lewis-Shumlai intends to seek civil penalties, attorneys' 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"). Mr. Lewis-Shumlai seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SUTHERLAND 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.

SUTHERLAND employed Mr. Lewis-Shumlai as an hourly paid, non-exempt employee from approximately September 2022 to August 2023 as a Crew Member, and August 2023 to June 2024 as a Shift Lead Supervisor. Mr. Lewis-Shumlai worked for SUTHERLAND at its locations in Paradise, California (5859 Clark Road, Paradise, California 95969) and Chico, California (2398 Esplanade, Chico, California 95926). During his employment, Mr. Lewis-Shumlai typically worked eight (8) hours or more per day and five (5) days per week. At the time his employment ended, Mr. Lewis-Shumlai was compensated approximately \$21.50 per hour. His job duties included, without limitation, taking orders from drive-thru and walk-in customers, preparing food, conducting temperature checks on food, checking inventory, and cleaning.

SUTHERLAND committed each of the following Labor Code violations against Mr. Lewis-Shumlai, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

SUTHERLAND’s Company-Wide and Uniform Payroll and HR Practices

J. A. SUTHERLAND, INC. is a California corporation and franchisee that owns and operates Taco Bell restaurants, with approximately 21 locations in California. Upon information and belief, SUTHERLAND maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Ukiah, California, for all non-exempt, hourly paid employees working for SUTHERLAND in California, including Mr. Lewis-Shumlai and other aggrieved employees. At all relevant times, SUTHERLAND issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Lewis-Shumlai and other aggrieved employees, regardless of their location or position.

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

During the relevant time period, SUTHERLAND willfully failed to pay all overtime wages owed to Mr. Lewis-Shumlai and other aggrieved employees. During the relevant time period, Mr. Lewis-Shumlai and other aggrieved employees were not paid overtime premiums for all of the hours they

¹ These facts, theories, and claims are based on Mr. Lewis-Shumlai’s experience and counsel’s review of those records currently available relating to Mr. Lewis-Shumlai’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, Mr. Lewis-Shumlai reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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.

First, during the relevant time period, upon information and belief, SUTHERLAND had a policy and/or practice of discouraging and impeding Mr. Lewis-Shumlai 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. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with SUTHERLAND's practices and/or policies of understaffing, including single-staffing, and assigning heavy workloads (*see infra*), led Mr. Lewis-Shumlai and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete assigned tasks.

For example, when Mr. Lewis-Shumlai worked the opening shift, he had to arrive about 15 minutes before his scheduled shift start-time to get the restaurant ready for customers, such as making sure the drive-thru menu displayed breakfast items; checking the building perimeter and parking lot for security concerns; unlocking the front doors and disabling the alarm; turning on the lights, grill, fryer, and steamer; and, occasionally, cleaning the restroom. However, Mr. Lewis-Shumlai was instructed by management not to clock in until his scheduled shift start-time to limit the overtime hours he accrued. As a further example, after clocking out at the end of his shift, Mr. Lewis-Shumlai often had to attend to outstanding duties before he could leave, such as speaking with management, taking out the trash, assisting customers and other employees, and taking pictures of the cleanliness of the restaurant to send to managers. This off-the-clock work could have been recorded by SUTHERLAND, but it refused to do so to avoid payment of additional wages to Mr. Lewis-Shumlai and other aggrieved employees. Thus, SUTHERLAND failed to track all of the time that employees spent performing work-related tasks before and after their shifts, and Mr. Lewis-Shumlai and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, SUTHERLAND's timekeeping system was integrated with the company's point-of-sale ("POS") system and only two (2) monitors were available for clocking in and out. Mr. Lewis-Shumlai and other aggrieved employees would sometimes have to wait to clock in for the start of their shifts because other employees were using the POS system to handle customer transactions and/or clocking in or out. For instance, Mr. Lewis-Shumlai was sometimes required to wait several minutes off-the-clock and under SUTHERLAND's control until a POS monitor was available for clocking-in. Thus, Mr. Lewis-Shumlai and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Third, as stated, on information and belief, SUTHERLAND had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. SUTHERLAND's uniform use of labor budgeting resulted in chronic understaffing, such there were too few employees on duty to handle the workload and attend to customers. Also, SUTHERLAND has systematically, and on a company-wide basis, understaffed its restaurants by adopting a single-staffing model for some positions, including, but not limited to, Shift Lead Supervisors, whereby only one (1) Shift Lead Supervisor employee was scheduled to work at certain times, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. SUTHERLAND also had a practice of failing to schedule meal periods, which further caused Mr. Lewis-Shumlai and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Lewis-Shumlai's meal periods were regularly interrupted to assist

employees and customers, due to the lack of coverage. However, SUTHERLAND did not compensate Mr. Lewis-Shumlai and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fourth, SUTHERLAND's company-wide timekeeping system prevented Mr. Lewis-Shumlai and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Lewis-Shumlai 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 before 30 minutes had elapsed. Thus, SUTHERLAND did not record all hours worked during meal periods, and Mr. Lewis-Shumlai and other aggrieved employees performed work during meal periods for which they were not paid.

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

SUTHERLAND's failure to pay Mr. Lewis-Shumlai 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. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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)(M) (defining "Hours Worked").

First, as set forth above, due to SUTHERLAND's company-wide policies and/or practices of limiting the amount of overtime employees could accrue pursuant to its labor budget practices, understaffing, and assigning heavy workloads, SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to perform work off-the-clock before and their shifts. As stated, Mr. Lewis-Shumlai and other aggrieved employees were required to perform opening duties, speak with management, take out the trash, assist customers and other employees, document the cleanliness of the restaurant, and/or wait for an available POS monitor to clock in for the start of their shifts, but were not compensated for this time.

Second, as also stated above, due to SUTHERLAND's company-wide practices of utilizing labor budgets, understaffing and/or single-staffing certain positions, assigning heavy workloads, failing to

adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Mr. Lewis-Shumlai and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Additionally, as stated, SUTHERLAND's company-wide timekeeping system prevented Mr. Lewis-Shumlai and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Lewis-Shumlai and other aggrieved employees for a full 30 minutes. Thus, SUTHERLAND systematically failed to pay Mr. Lewis-Shumlai and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

SUTHERLAND did not pay at least minimum wages for all hours worked by Mr. Lewis-Shumlai and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SUTHERLAND 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, SUTHERLAND regularly failed to pay at least minimum wages to Mr. Lewis-Shumlai 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. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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.

First, during the relevant time period, as stated, SUTHERLAND had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing certain positions due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to adhere to a schedule for meal periods, resulted in a lack of meal period coverage and prevented Mr. Lewis-Shumlai and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. For example, as stated, Mr. Lewis-Shumlai's

meal periods were regularly interrupted to assist employees and customers, due to the lack of coverage. For the same reasons, Mr. Lewis-Shumlai had to take his meal periods late, after the fifth hour of work, about twice per month, or would sometimes miss his meal periods. Thus, Mr. Lewis-Shumlai 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.

Second, as stated, SUTHERLAND's company-wide timekeeping system prevented Mr. Lewis-Shumlai and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Lewis-Shumlai 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 before 30 minutes had elapsed. Mr. Lewis-Shumlai 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.

Third, Mr. Lewis-Shumlai and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Lewis-Shumlai sometimes worked shifts in excess of ten (10) or more hours per day, but was not always provided a second 30-minute meal period. Mr. Lewis-Shumlai 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.

Fourth, SUTHERLAND had a company-wide policy of requiring all employees to sign blanket meal period waivers. SUTHERLAND took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, SUTHERLAND's "Meal Period Waiver Agreement" and "Second Meal Period Waiver Agreement" require employees to provide written notice should they wish to revoke the waiver. SUTHERLAND's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Lewis-Shumlai and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because

SUTHERLAND's obligation to provide Mr. Lewis-Shumlai and other aggrieved employees with meal periods did not arise until SUTHERLAND had employed them for a full five (5) hours.

At all times herein mentioned, SUTHERLAND knew or should have known that, as a result of these policies, Mr. Lewis-Shumlai and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods.

SUTHERLAND further knew or should have known that it did not pay Mr. Lewis-Shumlai and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, SUTHERLAND engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Lewis-Shumlai and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, SUTHERLAND failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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, 273 (2016).

During the relevant time period, SUTHERLAND regularly failed to authorize and permit Mr. Lewis-Shumlai 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, SUTHERLAND's company-wide policies and practices, including labor budgeting and/or limited payroll allocation, understaffing and/or single-staffing certain positions, and assigning heavy workloads, prevented Mr. Lewis-Shumlai and other aggrieved employees from being able to take rest periods. SUTHERLAND also failed to adhere to a schedule for rest periods, which, coupled with SUTHERLAND's failure to

provide adequate rest period coverage, further led to Mr. Lewis-Shumlai and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, on information and belief, SUTHERLAND maintained a company-wide on-premises rest period policy, which effectively required that Mr. Lewis-Shumlai and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Lewis-Shumlai 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. Thus, SUTHERLAND effectively maintained control over Mr. Lewis-Shumlai and other aggrieved employees during rest periods.

As a result of SUTHERLAND's practices and policies, Mr. Lewis-Shumlai 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 rest periods to which they were entitled. For example, Mr. Lewis-Shumlai had to work through his rest periods or had his rest periods interrupted to assist other employees and customers, due to heavy workload, and because he had no coverage.

SUTHERLAND has 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, Mr. Lewis-Shumlai and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, SUTHERLAND failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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. SUTHERLAND has not provided Mr. Lewis-Shumlai 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, SUTHERLAND has knowingly and intentionally provided Mr. Lewis-Shumlai and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SUTHERLAND issued uniform wage statements to Mr. Lewis-Shumlai 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 the corresponding number of hours worked at each hourly rate. Specifically, SUTHERLAND violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SUTHERLAND did not record the time Mr. Lewis-Shumlai 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), SUTHERLAND did not list the correct amount of gross wages and net wages earned by Mr. Lewis-Shumlai and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SUTHERLAND failed to accurately list the total number of hours worked by Mr. Lewis-Shumlai 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).

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 hours 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), SUTHERLAND willfully failed to maintain accurate payroll records for Mr. Lewis-Shumlai 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, SUTHERLAND engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Lewis-Shumlai and other aggrieved employees, in violation of section 1198. Furthermore, in light of SUTHERLAND’s failure to provide Mr. Lewis-Shumlai and other aggrieved employees with second 30-minute meal periods to which they were entitled, SUTHERLAND kept no records of meal start and end times for second meal periods.

Because SUTHERLAND failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Lewis-Shumlai 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, Mr. Lewis-Shumlai 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.

Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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, SUTHERLAND willfully failed to pay Mr. Lewis-Shumlai and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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.

SUTHERLAND willfully failed to pay Mr. Lewis-Shumlai and other aggrieved employees who are no longer employed by SUTHERLAND the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving SUTHERLAND's employ.

Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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 time period, on information and belief, SUTHERLAND scheduled Mr. Lewis-Shumlai and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Lewis-Shumlai and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Lewis-Shumlai and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, SUTHERLAND caused Mr. Lewis-Shumlai and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with Labor Code sections 551 and 552, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

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(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

SUTHERLAND's California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. SUTHERLAND could have provided Mr. Lewis-Shumlai and other aggrieved employees with a suitable resting facility within all of its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Mr. Lewis-Shumlai and other aggrieved employees were forced to adjust to areas not conducive to resting or search for areas outside of the restaurant which are not designated or reserved for their rest, such as their vehicles.

SUTHERLAND did not provide Mr. Lewis-Shumlai and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Lewis-Shumlai and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, SUTHERLAND denied them any area within its restaurants to cease work and recover. Moreover, SUTHERLAND did not inform Mr. Lewis-Shumlai and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of SUTHERLAND's company-wide failure to provide suitable resting facilities in all of its restaurants, Mr. Lewis-Shumlai and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. SUTHERLAND's failure to provide suitable resting facilities to Mr. Lewis-Shumlai and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

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, SUTHERLAND, on a company-wide basis, required that Mr. Lewis-Shumlai 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 fully reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Lewis-Shumlai and other aggrieved employees were required to use their personal mobile devices and mobile data for work-related tasks, including responding to text messages from management and co-workers, taking and sending pictures of the restaurant to management, and downloading and using a wireless printing application to print documents. Although SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, SUTHERLAND failed to fully reimburse them for these costs.

Second, SUTHERLAND had a company-wide policy of requiring Mr. Lewis-Shumlai and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed

to reimburse them for all costs of travel, including mileage. For example, Mr. Lewis-Shumlai was required to drive to the bank to get change for the cash registers and to SUTHERLAND's other restaurant locations to pick up ingredients and other restaurant supplies. Although SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, SUTHERLAND did not reimburse them for their travel expenses.

Third, during the relevant time period, SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to purchase supplies that were necessary for the completion of their work-related duties. For example, during his employment, Mr. Lewis-Shumlai spent about \$10 to purchase markers because SUTHERLAND failed to provide him with these supplies, which were necessary for the workplace to operate properly and/or meet management's expectations. Although SUTHERLAND required Mr. Lewis-Shumlai and other aggrieved employees to purchase and use their own supplies in the performance of their duties, it did not reimburse them for these expenses.

Fourth, during the relevant time period, SUTHERLAND, on a company-wide basis, required Mr. Lewis-Shumlai and other aggrieved employees to wear uniforms bearing the Taco Bell company logo, including shirts and hats. Due to the nature of restaurant work, Mr. Lewis-Shumlai's and other aggrieved employees' uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. In addition, SUTHERLAND did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SUTHERLAND only provided Mr. Lewis-Shumlai with two (2) shirts during his employment. Because SUTHERLAND failed to provide Mr. Lewis-Shumlai and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, Mr. Lewis-Shumlai and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, SUTHERLAND failed to maintain uniforms it required Mr. Lewis-Shumlai and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

Thus, SUTHERLAND 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. Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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.

SUTHERLAND failed to provide Mr. Lewis-Shumlai and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SUTHERLAND's failure to provide Mr. Lewis-Shumlai and other aggrieved employees with written notice of basic information regarding their employment with SUTHERLAND is in violation of Labor Code section 2810.5.

Mr. Lewis-Shumlai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SUTHERLAND into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

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." SUTHERLAND, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Lewis-Shumlai's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Lewis-Shumlai seeks the remedies set forth in Labor Code section 558 for himself, 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(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Lewis-Shumlai acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SUTHERLAND for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 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, Mr. Lewis-Shumlai 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 Mr. Lewis-Shumlai's reasonable attempt to settle his dispute with SUTHERLAND prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform SUTHERLAND of Mr. Lewis-Shumlai's aforementioned grievances and the proposed remedies as detailed below, while affording SUTHERLAND a reasonable opportunity to satisfy Mr. Lewis-Shumlai's demands.

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

1. SUTHERLAND shall pay Mr. Lewis-Shumlai and all other aggrieved employees employed by SUTHERLAND at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SUTHERLAND 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 and provided lawful meal and rest periods.
3. SUTHERLAND shall conduct a survey or interview all current and former aggrieved employees in California who worked for SUTHERLAND 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 mobile device expenses, mileage, travel expenses, supply and equipment expenses, laundering expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SUTHERLAND shall pay Mr. Lewis-Shumlai and 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. SUTHERLAND also shall pay Mr. Lewis-Shumlai and 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. SUTHERLAND shall provide 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.
6. SUTHERLAND shall reimburse Mr. Lewis-Shumlai and all aggrieved employees who were required to pay for any business expenses incurred for SUTHERLAND's benefit, including, but not limited to, mobile device usage, mileage, travel expenses, supply and equipment expenses, laundering expenses, or other expenditures as required by Labor Code section 2802.
7. SUTHERLAND 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).

8. SUTHERLAND shall pay accrued legal interest to Mr. Lewis-Shumlai and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
9. SUTHERLAND shall provide Mr. Lewis-Shumlai and all aggrieved employees employed by SUTHERLAND 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).
10. SUTHERLAND 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.
11. SUTHERLAND 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, 248.5, 256, 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: J. A. SUTHERLAND, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 1288

J. A. SUTHERLAND, INC.
1199 NORTH STATE ST.
UKIAH, CA 95482

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.

J. A. SUTHERLAND, INC.
1199 NORTH STATE ST.
UKIAH, CA 95482



9590 9402 7706 2122 1528 69

7022 2410 0000 2265 1288

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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

1. Service Type
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 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Mail Restricted Delivery
 - ☐ Priority Mail Express®
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Domestic Return Receipt

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OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$

J. A. SUTHERLAND, INC.
1199 NORTH STATE ST.
UKIAH, CA 95482

PS Form 3800, April 2015 PSN 7530-02-000-9053

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.

J. A. SUTHERLAND, INC.
1199 NORTH STATE ST.
UKIAH, CA 95482



9590 9402 7706 2122 1528 69

Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

BONNIE JOGRAM

C. Date of Delivery

1/13/20

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
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- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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Mail Restricted Delivery
(00)

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

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 17, 2025**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original ☐ [or] ☒ a true copy thereof ☒ to interested parties as follows ☐ [or] ☐ as stated on the attached service list:

Joshua D. Carlon
joshua.carlon@aalrr.com

Attorneys for Defendant
J. A. SUTHERLAND, INC.

Nour Vakhshoury
nour.vakhshoury@aalrr.com
ATKINSON, ANDELSON, LOYA, RUUD
& ROMO
12800 Center Court Drive, Suite 300
Cerritos, CA 90703
Tel.: (562) 653-3544
Fax: (562) 653-3333

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

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

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 17, 2025**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name

Signature

