

SAIRAH BUDHWANI  
310.929.5455 Direct  
Sairah.Budhwani@capstonelawyers.com

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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):<sup>1</sup>

### **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

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<sup>1</sup> 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  
**X** ☐ Addressee

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

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

1. Service Type  
☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☒ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Mail Restricted Delivery

2. Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt