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Superior Court of California,
County of San Diego

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Attorneys for Plaintiff Lilian Moreno, a proxy for the State of California
as an aggrieved employee pursuant to the Private Attorneys General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LILIAN MORENO, a proxy for the State of
California as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

FAROOQI FOOD MANAGEMENT, INC.
dba DENNY'S; FAROOQI FOOD
MANAGEMENT, INC.; DENNY'S, INC.,
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2022-00033791-CU-OE-CTL

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

1 Plaintiff Lilian Moreno (“Plaintiff”), a proxy for the State of California as an aggrieved
2 employee, alleges, on behalf the State of California and all aggrieved employees, as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Farooqi Food Management, Inc. dba Denny’s;
8 Farooqi Food Management, Inc.; Denny’s, Inc., and DOES 1 through 10, inclusive (collectively
9 “Defendants”) in California as non-exempt, hourly-paid employees, and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint (“Aggrieved Employees”),
13 at any time between one year before Plaintiff’s submission of the LWDA Notice (defined
14 below) in advance of Plaintiff’s filing of this complaint (in addition to all days the period was
15 stayed or tolled) until judgment. Plaintiff’s pro-rata share of civil penalties sought in this action
16 does not exceed \$75,000.

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

20 3. This Court has jurisdiction over all Defendants because Defendants are either
21 citizens of California, have sufficient minimum contacts in California, or otherwise intentionally
22 avail themselves of the California market so as to render the exercise of jurisdiction over them
23 by the California courts consistent with traditional notions of fair play and substantial justice.

24 4. There is no basis for federal diversity jurisdiction in this action given that the
25 State of California, the real party in interest, is not a “citizen” for purposes of satisfying
26 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013)
27 (holding when the real party in interest is a state, it cannot be a “citizen” for purposes of
28 diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the

1 amount in controversy requirement for federal diversity jurisdiction in this action, and that
2 diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties
3 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4 5. Venue is proper in this Court because Defendants employ Aggrieved Employees
5 in this county and Labor Code violations occurred throughout California, including in this
6 county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60
7 Cal.App.5th 1069, 1075 (2021) ("Venue is proper in any county in which an aggrieved
8 employee worked and Labor Code violations allegedly occurred.")

9 6. PAGA authorizes aggrieved employees to sue as private attorneys general their
10 current or former employers for civil penalties for violations of various provisions in the
11 California Labor Code.

12 **THE PARTIES**

13 7. Plaintiff is a resident of San Diego County, California. Defendants employed
14 Plaintiff from approximately April 2014, to approximately September 2021, as a non-exempt
15 hourly-paid employee, whose job duties included, but were not limited to, cleaning, washing
16 dishes, and bussing tables, as a service assistant at Defendants' restaurant in San Diego,
17 California. Plaintiff typically worked five or six hours or more per workday, four or more days
18 per week. Plaintiff also worked shifts that were longer than eight hours a day.

19 8. Plaintiff is informed and believes, and thereon alleges, that Defendant Farooqi
20 Food Management, Inc. dba Denny's is a corporation authorized to do, and doing business in
21 California, and at all times, an employer whose employees are engaged throughout this county
22 and the State of California.

23 9. Plaintiff is informed and believes, and thereon alleges, that Defendant Farooqi
24 Food Management, Inc. is a corporation authorized to do, and doing business in California, and
25 at all times, an employer whose employees are engaged throughout this county and the State of
26 California.

27 10. Plaintiff is informed and believes, and thereon alleges, that Defendant Denny's,
28 Inc. has multiple restaurants throughout the United States, including in California.

11. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10 and will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the named Defendants, and that each and all of the acts and omissions alleged were performed by, or are attributable to Defendants, each acting as the agent, employee, alter ego, joint employer, and/or joint venturer of, or working in concert with, each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

12. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of in this complaint. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the harm and violations alleged in this PAGA only complaint.

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

PAGA REPRESENTATIVE ALLEGATIONS

14. Plaintiff is informed and believes that Defendants maintain a centralized Human Resources department for all non-exempt, hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved Employees. At all relevant times, Defendants issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees in California, including Plaintiff and Aggrieved Employees, regardless of their location or position.

15. Upon information and belief, Defendants process payroll for all non-exempt, hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved Employees. Further, Defendants issue the same uniform and formatted wage statements to all

1 non-exempt, hourly-paid employees in California, irrespective of their work location, position,
2 or manner in which each employee's employment ended. Defendants' payroll department
3 processed payroll for non-exempt, hourly-paid employees in the same manner throughout
4 California. In other words, Defendants utilized the same methods and formulas when calculating
5 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

6 16. Defendants continue to employ non-exempt, hourly-paid employees in
7 California.

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

12 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain
14 wages for overtime compensation and that they were not receiving overtime wages at the correct
15 overtime rate and/or for work that was required to be performed.

16 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
17 Aggrieved Employees were not fully compensated because, among other reasons, all hours
18 worked may not have been recorded and because Defendants did not always pay for all hours
19 worked.

20 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least
22 minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff and
23 Aggrieved Employees were not paid at least minimum wages for all work performed.

24 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and Aggrieved Employees were entitled to meal periods in
26 accordance with the Labor Code; that Plaintiff and Aggrieved Employees were entitled to
27 payment of one additional hour of pay at their regular rates of compensation when they were not
28 provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and

1 Aggrieved Employees were not provided with all meal periods nor payment of one additional
2 hour of pay at their regular rates of compensation when they did not receive a timely,
3 uninterrupted, thirty-minute meal period.

4 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and Aggrieved Employees were entitled to rest periods in
6 accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or
7 should have known that Plaintiff and Aggrieved Employees were entitled to payment of one
8 additional hour of pay at their regular rates of compensation when they were not provided with a
9 compliant rest period, and that Plaintiff and Aggrieved Employees were not provided compliant
10 rest periods nor payment of one additional hour of pay at their regular rates of compensation
11 when they were not provided a compliant rest period.

12 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete
14 and accurate wage statements in accordance with California law. In violation of the California
15 Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate wage
16 statements.

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

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete time records in
22 accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

23 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of
25 wages during their employment. In violation of the California Labor Code, Plaintiff and
26 Aggrieved Employees did not receive payment of all wages, including, but not limited to,
27 overtime wages, minimum wages, meal period and rest period premium wages, , within
28 permissible time periods.

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of
3 all wages earned upon termination of employment. In violation of the California Labor Code,
4 Plaintiff and Aggrieved Employees did not receive payment of all wages due, including, but not
5 limited to, overtime wages, minimum wages, meal period and rest period premium wages,
6 within permissible time periods.

7 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with
9 written notice of the material terms of their employment with Defendants as required by the
10 California Wage Theft Prevention Act but failed to do so.

11 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to timely comply with requests from Plaintiff and other
13 Aggrieved Employees to inspect or receive a copy of their employment and personnel records in
14 accordance with the Labor Code, but failed to do so.

15 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that they had a duty to provide Plaintiff and Aggrieved Employees with
17 written notice setting forth the amount of paid sick leave available, or paid time off leave an
18 employer provides in lieu of sick leave, for use on either the employees' itemized wage
19 statement or in a separate writing provided on the designated pay day with the employees'
20 payment of wages, but failed to do so in violation of the California Labor Code. Further,
21 Defendants knew or should have known that they had a duty to provide Plaintiff and other
22 Aggrieved Employees with no less than 24 hours of accrued sick leave by the 120th calendar
23 day of employment, but failed to do so.

24 31. Plaintiff is informed and believes, and thereon alleges, that at all times,
25 Defendants knew or should have known that they had a duty to compensate Plaintiff and
26 Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay
27 such compensation, but failed to do so, and falsely represented to Plaintiff and Aggrieved
28 Employees that they were properly denied wages, all in order to increase Defendants' profits.

1 32. At all times, PAGA provides that any provision of law under the Labor Code and
2 applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the
3 Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor
4 Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved
5 employees in a civil action brought on behalf of themselves and other current or former
6 employees pursuant to procedures outlined in Labor Code section 2699.3.

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

10 34. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
12 former employees and one or more of the alleged violations were committed against them.

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

- 16 (a) The aggrieved employee or representative shall give written notice by
17 online filing with the LWDA and by certified mail to the employer of the
18 specific provisions of the California Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violation.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 Section 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall notify the employer and the aggrieved employee or
24 representative by certified mail that it does not intend to investigate the
25 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
26 postmark date of the aggrieved employee’s notice. Upon receipt of the
27 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
28 calendar days of the postmark date of the aggrieved employee’s notice,

the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give (a) written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to Section 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 sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA 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 aggrieved employee may commence a civil action pursuant to Section 2699.

37. On or about June 17, 2022, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated June 17, 2022, is attached as Exhibit 1.

9 40. Defendants, at all times relevant to this complaint, were employers or persons
10 acting on behalf of an employer who violated Plaintiff's and Aggrieved Employees' rights by
11 violating various sections of the California Labor Code as set forth herein.

42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 226(a), 226(c), 226.7, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2810.5, as well as all applicable IWC Wage Orders.

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

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

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1 2699.5. Section 2699.5 enumerates, among others, Labor Code sections 201, 202, 203, 204, 210,
2 223, 226(a), 226(c), 226.7, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and
3 2810.5.

4 45. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff,
5 to recover civil penalties for violations of those Labor Code sections not found in section
6 2699.5, including Sections 226(c), 1182.12, and 1198.5.

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

- 9 (a) Violations of Labor Code sections 510 and 1198, and the applicable IWC
10 Wage Order for Defendants' failure to compensate Plaintiff and
11 Aggrieved Employees with all required overtime pay, as set forth below;
- 12 (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and
13 1198 and the applicable IWC Wage Order for Defendants' failure to
14 compensate Plaintiff and Aggrieved Employees with at least minimum
15 wages for all hours worked, as set forth below;
- 16 (c) Violations of Labor Code sections 226.7, 512(a), and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
18 and Aggrieved Employees with meal periods and/or pay meal period
19 premiums, as set forth below;
- 20 (d) Violations of Labor Code sections 226.7 and 1198, and the applicable
21 IWC Wage Order for Defendants' failure to provide Plaintiff and
22 Aggrieved Employees with rest periods and/or pay rest period premiums,
23 as set forth below;
- 24 (e) Violations of Labor Code sections 226(a) and 1198, and the applicable
25 IWC Wage Order for failure to provide accurate and complete wage
26 statements to Plaintiff and Aggrieved Employees, as set forth below;
- 27 (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable
28 IWC Wage Order for failure to maintain accurate payroll records, as set

1 forth below;

- 2 (g) Violations of Labor Code section 1198 and the applicable IWC Wage
3 Order for failure to maintain accurate time records, as set forth below;
- 4 (h) Violations of Labor Code section 204 for failure to timely pay all wages
5 during employment, as set forth below;
- 6 (i) Violations of Labor Code sections 201, 202, and 203, for failure to timely
7 pay all earned wages upon termination, as set forth below;
- 8 (j) Violations of Labor Code sections 1198 and 2810.5(a)(1) for failure to
9 provide Plaintiff and Aggrieved Employees with written notice of
10 information material to Plaintiff's and Aggrieved Employees'
11 employment with Defendants, as set forth below; and
- 12 (k) Violations of Labor Code sections 226(c) and 1198.5 for failure to
13 provide the right to inspect and/or product Plaintiff's employment records
14 upon request within the required time frame, as set forth below.

15 **FAILURE TO PAY OVERTIME WAGES IN**
16 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198 AND**
17 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 3**

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

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

27 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
28 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day

1 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in
2 excess of eight hours in a day or more than forty hours in a workweek.

3 50. The applicable Wage Order further provides that Defendants are and were
4 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
5 overtime compensation at a rate of two times their regular rate of pay and required to pay
6 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours
7 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

8 51. An employee's regular rate of pay includes all remuneration for employment
9 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

10 52. California Labor Code section 510 codifies the right to overtime compensation at
11 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
12 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
13 overtime compensation at twice the employee's regular rate of pay for hours worked in excess
14 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

15 53. At all relevant times, Defendants failed to pay all overtime wages owed to
16 Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff and other
17 Aggrieved Employees were not paid overtime premiums for all of the hours they worked in
18 excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a
19 week, and/or for the seventh consecutive day of work, sometimes because all hours that they
20 worked were not recorded, and other times because they were simply not paid for all hours that
21 were recorded and/or worked. As a result, Plaintiff believes the hours she and other Aggrieved
22 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
23 and other Aggrieved Employees may not have been properly compensated for all hours that
24 were recorded and/or worked. In addition, Plaintiff and Aggrieved Employees have been subject
25 to Defendants' control during pre-shift and post-shift times, as well as during unpaid meal
26 periods resulting in unpaid overtime where they are not getting paid, which, when working
27 overtime eligible shifts results in underpaid overtime compensation. Based on information and
28 belief, not all recorded work hours were paid because of inaccurate timekeeping policies and

1 practices. For example, upon information and belief, not all recorded hours were paid because of
2 inaccurate timekeeping policies and practices. Defendants' policies are, and continue to be,
3 unfair and have, over time, resulted in the underpayment of wages to Plaintiff and other
4 Aggrieved Employees. To the extent Defendants' policies have taken away time worked that
5 was eligible for overtime, Plaintiff and other Aggrieved Employees were denied overtime pay
6 for all hours worked. As a result, Plaintiff believes the hours she and other Aggrieved
7 Employees worked may not have been properly recorded and/or paid, and therefore, Plaintiff
8 and other Aggrieved Employees may not have been properly compensated for all hours that
9 were recorded and/or worked.

10 54. Defendants knew or should have known that, as a result of their policies,
11 practices and/or procedures, Plaintiff and other Aggrieved Employees were at times performing
12 their assigned duties off-the-clock, were subject to control of Defendants, and/or were suffered
13 or permitted to perform work for which they were not paid. Defendants also knew, or should
14 have known, that they did not compensate Plaintiff and other Aggrieved Employees for off-the-
15 clock work or all hours worked. Because Plaintiff and other Aggrieved Employees sometimes
16 worked shifts longer than eight hours a day, more than forty hours a week, and/or seven
17 consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other
18 times, Defendants simply did not pay for all the hours that were recorded due to timekeeping
19 policies. Therefore, Plaintiff and other Aggrieved Employees were not paid overtime wages for
20 all of the overtime hours they actually worked. Defendants' failure to pay Plaintiff and other
21 Aggrieved Employees the balance of overtime compensation, as required by California law,
22 violates the provisions of California Labor Code sections 510 and 1198 and Wage Order No. 5.

23 55. Based on the foregoing, Plaintiff and other Aggrieved Employees are entitled to
24 recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections
25 510 and 1198 and Wage Order No. 5, pursuant to Labor Code sections 558, 1194, and/or
26 2699(a), (f), and (g).
27
28

**FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1 AND 1198
AND CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050, SUBD. 4**

56. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time defined in Wage Order No. 5 as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

57. Defendants have not paid for all the time Plaintiff and Aggrieved Employees have worked throughout the day including all time spent working through meal periods and/or any other time in the day when the employees were performing work tasks subject to Defendants’ control. Plaintiff and other Aggrieved Employees are subjected to Defendants’ control pre-shift, post-shift, and throughout the workday, even during unpaid periods of the workday such as unpaid meal periods.

58. As set forth above, Plaintiff is informed and believes, and thereon alleges, that Defendants’ timekeeping policies and practices Plaintiff and other Aggrieved Employees were not paid for all hours worked. Additionally, Defendants’ policy and/or practice of understaffing, among other things, has caused a lack of meal and rest period coverage and lead employees to perform off-the-clock work during their meal periods. Defendants did not pay minimum wages for these off-the-clock hours that Plaintiff and other Aggrieved Employees worked, including but not limited to before or after shifts as well as during meal and rest periods.

59. Defendants also have had a continuous policy of not paying Plaintiff and Aggrieved Employees for all hours worked throughout the day, including, but not limited to, before shifts start, after shifts end, and/or any other time in the day when the employees were performing work tasks, subject to Defendants’ control.

60. To the extent that the off-the-clock work and/or recorded hours did not qualify

1 for overtime premium payment, Defendants did not pay at least minimum wages for those hours
2 worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223,
3 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 5. Plaintiff and other Aggrieved
4 Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest,
5 pursuant to Labor Code sections 225.5, 1194, 1197.1, and/or 2699(a), (f), and (g).

6 **FAILURE TO PROVIDE MEAL PERIODS IN**
7 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), AND 1198 AND**
8 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 11**

9 61. At all relevant times, California Labor Code sections 226.7, 512(a), and 1198,
10 and the applicable IWC Wage Order have applied to Plaintiff's and Aggrieved Employees'
11 employment by Defendants.

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

19 63. At all relevant times, California Labor Code sections 226.7, 512(a), and 1198
20 provide that no employer shall require an employee to work during any meal period mandated
21 by an applicable order of the IWC. The wage order's meal period requirement is satisfied if "the
22 employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is
23 relieved of all duty for the entire period." *Brinker Rest. Corp.*, 53 Cal. 4th at 1036.

24 64. At all relevant times, Labor Code sections 226.7, 512(a), and 1198, and the
25 applicable IWC Wage Order also require employers to provide a second meal period of not less
26 than thirty minutes if an employee works over ten hours per day, and if one is not provided, pay
27 an employee one additional hour of pay at the employee's regular rate of compensation, except
28 that if the total hours worked is no more than twelve hours, the second meal period may be

1 waived by mutual consent of the employer and the employee only if the first meal period was
2 not waived.

3 65. Plaintiff is informed and believes, and thereon alleges, that Defendants prevented
4 Plaintiff and other Aggrieved Employees from taking all timely, uninterrupted meal periods,
5 including second meal periods, to which they were entitled. As a result of these policies and/or
6 practices, Plaintiff and other Aggrieved Employees continued to perform their assigned duties
7 without being able to take timely, compliant meal periods. Plaintiff and other Aggrieved
8 Employees had to work through part or all of their meal periods, had their meal periods
9 interrupted, and/or had to wait extended periods of time before taking meal periods. Moreover,
10 Defendants' policies and/or practices of communicating with employees regarding work-related
11 matters as well as directing employees to continue working and/or return to work during meal
12 periods resulted in employees not receiving timely, uninterrupted thirty-minute meal periods.

13 66. Defendants knew or should have known that as a result of these policies and/or
14 practices, Plaintiff and other Aggrieved Employees were prevented from being relieved of all
15 duties and required to perform some of their assigned duties during meal periods and that they
16 did not receive timely meal periods. As a result, Plaintiff and other Aggrieved Employees had to
17 work through all or part of their meal periods, have their meal periods interrupted, and/or wait
18 extended periods of time before taking meal periods.

19 67. Defendants have failed to provide meal periods to Plaintiff and other Aggrieved
20 Employees. As a matter of policy and practice, Defendants have not provided Plaintiff and other
21 Aggrieved Employees with full thirty-minute meal periods for each day worked where they are
22 free from Defendants' required duties and control. Defendants have subjected Plaintiff and other
23 Aggrieved Employees to control and demanding duties throughout their workday, even during
24 times which should constitute uninterrupted duty-free meal periods. Defendants encouraged
25 employees to stay working and/or under employer control, as opposed to encouraging the rest
26 and nourishment meal periods are designed to provide.

27 68. Defendants also engaged in a systematic, company-wide policy and/or practice of
28 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal

1 period premium payments resulting from meal period violations. As such, Plaintiff was unaware
2 of when meal period premiums were owed to her. Accordingly, Plaintiff and other Aggrieved
3 Employees did not receive all meal period premium wages owed when compliant meal periods
4 were not provided. To the extent that Defendants did pay meal period premium wages to
5 Aggrieved Employees, such payments were admissions of their failure to provide meal periods.

6 69. Accordingly, Defendants failed to provide all meal periods and/or pay all meal
7 period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No.
8 5. Plaintiff and other Aggrieved Employees are therefore entitled to civil penalties, attorneys'
9 fees, costs, and interest, pursuant to Labor Code sections 226.7, 512, 558, 1198, and 2699(a),
10 (f), and (g).

11 **FAILURE TO PROVIDE REST PERIODS IN**
12 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198 AND**
13 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 12**

14 70. At all relevant times, California Labor Code sections 226.7 and 1198, and the
15 applicable IWC Wage Order have applied to Plaintiff and Aggrieved Employees' employment
16 by Defendants.

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

23 72. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC. To comply with its obligation to provide rest periods under
26 California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must
27 "relinquish any control over how employees spend their break time, and relieve their employees
28 of all duties — including the obligation that an employee remain on call. A rest period, in short,

1 must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270
2 (2016). Pursuant to Labor Code section 226.7(c) and the applicable IWC Wage Order, Plaintiff
3 and Aggrieved Employees are entitled to recover from Defendants one additional hour of pay at
4 their regular rates of compensation for each workday that a required rest period was not
5 provided.

6 73. Plaintiff and Aggrieved Employees frequently worked shifts three and one-half
7 hours or longer, in excess of six hours, and/or ten hours or longer without receiving all
8 uninterrupted net ten-minute rest periods to which they were entitled.

9 74. Upon information and belief, during the relevant time period, Defendants’
10 company-wide policy and practice of understaffing their business locations which resulted in a
11 lack of break coverage and prevented Plaintiff and Aggrieved employees from taking all timely,
12 uninterrupted rest periods to which they were entitled. Defendants’ policies and practices fail to
13 relinquish all control over the employees during breaks.

14 75. Plaintiff is further informed and believes that Defendants have also engaged in a
15 systematic, company-wide practice and/or policy of not paying rest period premiums owed
16 when rest periods are not provided. Additionally, to the extent Defendants paid rest period
17 premiums, they were paid at the incorrect rates. Thus, Defendants denied Plaintiff and
18 Aggrieved Employees rest periods and failed to pay them rest period premium wages due, in
19 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

20 76. Similar to meal periods, Defendants’ policies and/or practices prevented Plaintiff
21 and other Aggrieved Employees from being relieved of all duties and to take compliant rest
22 periods. As a result, Plaintiff and other Aggrieved Employees would frequently work shifts
23 three and one-half hours or longer, in excess of six hours, and/or in excess of ten hours without
24 receiving all uninterrupted ten-minute rest periods to which they were entitled.

25 77. Defendants have failed to authorize and permit rest periods to Plaintiff and other
26 Aggrieved Employees. As a matter of policy and practice, Defendants have not provided
27 Plaintiff and other Aggrieved Employees with net ten-minute rest periods for each day worked
28 where they are free from Defendants’ required duties and control. Defendants have subjected

1 Plaintiff and other Aggrieved Employees to control and demanding duties throughout their
2 workday, even during times which should constitute uninterrupted duty-free rest periods.
3 Defendants encouraged employees to stay working and/or under employer control, as opposed
4 to encouraging the rest and nourishment rest periods are designed to provide.

5 78. Defendants also engaged in a systematic, company-wide policy and/or practice of
6 not properly training Plaintiff and other Aggrieved Employees on their entitlement to rest period
7 premium payments resulting from rest period violations. As such, Plaintiff was unaware of
8 when rest period premiums were owed to her. Accordingly, Plaintiff and other Aggrieved
9 Employees did not receive all rest period premium wages owed when compliant rest periods
10 were not provided. To the extent that Defendants did pay rest period premium wages to
11 Aggrieved Employees, such payments were admissions of their failure to provide rest periods.

12 79. Accordingly, Defendants failed to provide all rest periods and/or pay all rest
13 period premiums in violation of Labor Code sections 226.7, and 1198 and Wage Order No. 5.
14 Plaintiff and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees,
15 costs, and interest, pursuant to Labor Code sections 226.7, 1198, and 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN**
17 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

18 80. At all relevant times, Labor Code sections 226(a) and 1198, and the Wage Order
19 have applied to Plaintiff and the Aggrieved Employees.

20 81. At all relevant times, Labor Code section 226(a) requires employers to make,
21 keep and furnish true, accurate, and complete employment records. Defendants have not
22 provided Plaintiff and other Aggrieved Employees with properly itemized wage statements.
23 Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for
24 violations of wage statement requirements without the need to establish injury. *Lopez v. Friant*
25 *& Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under
26 PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and
27 intentional' requirements of section 226(e)(1)."). Rather, Labor Code section 226.3 provides
28 that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount

1 of \$250 per employee per violation in an initial citation and \$1,000 per employee for each
2 violation in a subsequent citation, for which the employer fails to provide the employee a wage
3 statement or fails to keep the required records pursuant to Section 226(a).

4 82. Defendants have provided Plaintiff and other Aggrieved Employees with
5 incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,
6 Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all
7 the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and/or did not
8 pay all hours recorded, Defendants did not list the correct amount of gross wages earned by
9 Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly,
10 Defendants failed to list the correct amount of net wages earned by Plaintiff and other
11 Aggrieved Employees in violation of Section 226(a)(5). In addition, upon information and
12 belief, the total regular and overtime hours listed in Defendants' wage statements, when added
13 together, do not sum up to the total hours worked by the employee during the pertinent time
14 period. Likewise, Defendants provide wage statements which do not properly itemize the total
15 hours worked because Defendants itemize the incorrect total number of hours worked. Without
16 additional information regarding the wage statement and undecipherable codes, an employee
17 cannot simply 'arrive at the sum of hours worked.' As such, Defendants' wage statements do
18 not comply with Labor Code section 226(a)(2). Additionally, upon information and belief,
19 because Defendants did not calculate other Aggrieved Employees' regular rate of pay correctly
20 for purposes of paying overtime and/or premium wages, they did not list the correct amount of
21 gross wages and net wages earned by other Aggrieved Employees in compliance with Sections
22 226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect
23 during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal
24 period and rest period premium wages, in violation of Section 226(a)(9). Furthermore, because
25 Defendants failed to pay all meal period and rest period premiums to Plaintiff and other
26 Aggrieved Employees, Defendants did not list the correct amount of gross wages earned by
27 Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). For the same
28 reasons, Defendants failed to list the correct amount of net wages earned by Plaintiff and other

1 Aggrieved Employees in violation of Section 226(a)(5). Additionally, Defendants failed to
2 itemize the amount of paid sick leave/paid time off Plaintiff and other Aggrieved Employees
3 had available each pay period.

4 83. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
5 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,
6 1198.5, and/or 2699(a), (f), and (g).

7 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
8 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND**
9 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

10 84. At all relevant times, Labor Code section 1174(d) provides that "[e]very person
11 employing labor in this state shall ... [k]eep a record showing the names and addresses of all
12 employees employed and the ages of all minors" and "[k]eep, at a central location in the state or
13 at the plants or establishments at which employees are employed, payroll records showing the
14 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
15 any applicable piece rate paid to, employees employed at the respective plants or
16 establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500
17 civil penalty if they fail to maintain accurate and complete records as required by Section
18 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
19 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
20 Employees showing the daily hours they worked and the wages paid as a result of failing to
21 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
22 by them in violation of Labor Code section 1174(d).

23 85. Labor Code section 1198 provides that the maximum hours of work and the
24 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
25 the applicable IWC Wage Order(s). Section 1198 further provides that "[t]he employment of
26 any employees for longer hours than those fixed by the order or under conditions of labor
27 prohibited by the order is unlawful." Pursuant to the applicable Wage Order, employers are
28 required to keep accurate time records showing when the employee begins and ends each work

1 period and meal period. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of shift, and meal
3 period, start and stop times, along with daily hours worked, for Plaintiff and other Aggrieved
4 Employees, in violation of Section 1198 and Wage Order No. 5.

5 86. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
6 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
9 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
10 **CODE OF REGULATIONS TITLE 8, SECTION 11050 SUBD. 7**

11 87. At all relevant times, California Labor Code section 1198 provides that the
12 maximum hours of work and the standard conditions of labor shall be those fixed by the Labor
13 Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further
14 provides that "[t]he employment of any employees for longer hours than those fixed by the
15 order or under conditions of labor prohibited by the order is unlawful." Pursuant to the
16 applicable IWC Wage Order, employers are required to keep accurate time records showing
17 when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, §
18 11050(7)(A).

19 88. During the relevant time period, Defendants failed, on a company-wide basis, to
20 keep accurate records of shift, and meal period, start and stop times for Plaintiff and other
21 Aggrieved Employees, in violation of Section 1198 and Wage Order No. 5.

22 89. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
23 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
24 2699(a), (f), and (g).

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT IN**
26 **VIOLATION OF LABOR CODE SECTION 204**

27 90. At all times relevant herein set forth, California Labor Code section 204 provides
28 that all wages earned by any person in any employment between the first and the fifteenth days,

1 inclusive, of any calendar month, other than those wages due upon termination of an employee,
2 are due and payable between the sixteenth and the twenty-sixth day of the month during which
3 the labor was performed.

4 91. At all times relevant herein, Labor Code section 204 provides that all wages
5 earned by any person in any employment between the sixteenth and the last day, inclusive, of
6 any calendar month, other than those wages due upon termination of an employee, are due and
7 payable between the first and the tenth day of the following month.

8 92. 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
13 calendar days following the close of the payroll period.

14 93. At all relevant times herein, Defendants failed to pay Plaintiff and other
15 Aggrieved Employees all wages due to them, including, but not limited to, overtime wages,
16 minimum wages, meal period and/or rest period premium wages, within any time period
17 specified by Labor Code section 204.

18 94. Plaintiff and other Aggrieved Employees are entitled to recover civil penalties,
19 attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and
20 (g).

21 **FAILURE TO PAY WAGES UPON TERMINATION IN**
22 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202 AND 203**

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

1 96. Defendants wilfully failed to pay Plaintiff and other Aggrieved Employees who
2 are no longer employed by Defendants all their earned wages at the time of discharge, or within
3 seventy-two hours of their leaving Defendants' employ in violation of California Labor Code
4 sections 201-202, including but not limited to, overtime wages, minimum wages, sick pay,
5 and/or meal period and rest period premium wages.

6 97. On or about September 5, 2021, Plaintiff provided two-weeks' notice of her
7 resignation, indicating her last day of work would be September 18, 2021. However, to this
8 day, Defendants have failed to pay Plaintiff her final pay.

9 98. Defendants' failure to pay Plaintiff and Aggrieved Employees who are no longer
10 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72
11 hours of their leaving Defendants' employment, violates Labor Code sections 201, 202 and 203.

12 99. Plaintiff and Aggrieved Employees are therefore entitled to recover civil
13 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and
14 (g).

15 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
16 **EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 1198 AND 2810.5**

17 100. California's Wage Theft Prevention Act was enacted to ensure that employers
18 provide employees with basic information material to their employment relationship at the time
19 of hiring, and to ensure that employees are given written and timely notice of any changes to
20 basic information material to their employment. Codified at California Labor Code section
21 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
22 provide written notice to employees containing basic and material payroll information,
23 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
24 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
25 regular payday designated by the employer, and any allowances claimed as part of the minimum
26 wage, including meal or lodging allowances.

27 101. Effective January 1, 2015, an employer's written notice pursuant to section
28 2810.5 must also include a statement that the employee may accrue and use sick leave; has a

1 right to request and use accrued paid sick leave; may not be terminated or retaliated against for
2 using or requesting the use of accrued paid sick leave; and has the right to file a complaint
3 against an employer who retaliates.

4 102. During the relevant time period, Defendants failed to provide written notice to
5 Plaintiff and other Aggrieved Employees that lists the requisite information set forth in Labor
6 Code section 2810.5(a)(1)(A)-(C) on a company-wide basis.

7 103. Defendants' failure to provide Plaintiff and other Aggrieved Employees with
8 written notice of basic information regarding their employment with Defendants is in violation
9 of Labor Code section 2810.5. Plaintiff and Aggrieved Employees are entitled to recover
10 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 2699(a), (f), and
11 (g).

12 **FAILURE TO PROVIDE OR PRODUCE EMPLOYMENT RECORDS IN VIOLATION**
13 **OF CALIFORNIA LABOR CODE SECTIONS 226(c), 1198.5, AND 1198**

14 104. At all relevant times herein set forth, California Labor Code section 226(b)
15 provides that every employer shall furnish current and former employees the right to inspect
16 or copy records pertaining to their employment, upon reasonable request to the employer.
17 Labor Code section 226(c) provides that an employer must comply with a request made
18 pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the
19 employee's request.

20 105. Additionally, Labor Code section 226(c) provides in relevant part:

21
22 An employer who receives a written or oral request to inspect or receive
23 a copy of records pursuant to subdivision (b) pertaining to a current or
24 former employee shall comply with the request as soon as practicable,
but no later than 21 calendar days from the date of the request. A
violation of this subdivision is an infraction.

25 106. Similarly, Labor Code section 1198.5 requires an employer to timely produce
26 certain employment records upon the request of an employee or their representative.

27 Specifically, Section 1198.5 provides in relevant part:

28 (a) Every current and former employee, or his or her representative, has
the right to inspect and receive a copy of the personnel records that the

1 employer maintains relating to the employee's performance or to any
2 grievance concerning the employee...

3 (b)(1) The employer shall make the contents of those personnel records
4 available for inspection to the current or former employee, or his or her
5 representative, at reasonable intervals and at reasonable times, but not
6 later than 30 calendar days from the date the employer receives a written
7 request...

8 (k) If an employer fails to permit a current or former employee, or his
9 or her representative, to inspect or copy personnel records within the
10 times specified in this section, or times agreed to by mutual agreement
11 as provided in this section, the current or former employee or the Labor
12 Commissioner may recover a penalty of seven hundred fifty dollars
13 (\$750) from the employer...

14 107. At all times relevant, California Labor Code section 226(f) states "[a] failure by
15 an employer to permit a current or former employee to inspect or copy records within the time
16 set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner
17 to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer."

18 108. At all times relevant, California Labor Code section 226(h) states "[a]n
19 employee may also bring an action for injunctive relief to ensure compliance with this section,
20 and is entitled to an award of costs and reasonable attorney's fees."

21 109. At all times relevant, the IWC Wage Order No. 5-2001, section 7(A), provides
22 "[e]very employer shall keep accurate information with respect to each employee including
23 the following: (1) Full name, home address, occupation and social security number. (2) Birth
24 date, if under 18 years, and designation as a minor. (3) Time records showing when the
25 employee begins and ends each work period. Meal periods, split shift intervals and total daily
26 hours worked shall also be recorded. Meal periods during which operations cease and
27 authorized rest periods need not be recorded. (4) Total wages paid each payroll period,
28 including value of board, lodging, or other compensation actually furnished to the employee.
(5) Total hours worked in the payroll period and applicable rates of pay. This information
shall be made readily available to the employee upon reasonable request."

110. During the relevant time period, Plaintiff sent Defendants reasonable written
requests for documents and records relating to her employment with Defendants. During the

relevant time period, Defendants failed to fully comply by providing an incomplete file.

111. Plaintiff requested that Defendants produce her employment records pursuant to California Labor Code sections 226(c) and 1198.5. Defendants did not fully comply with this request. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of Labor Code sections 226(c) and 1198.5. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods and/or meal premiums); 226.7 and 1198 (by failing to provide all rest periods and/or rest premiums); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11050(7) (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 1198 and 2810.5(a)(1) (by failing to provide written notice of the material terms of employment); and 226(c) and 1198.5 (by

1 failing to timely produce employment records upon request);

2 3. For civil penalties pursuant to California Labor Code sections 226.3, 558,
3 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
4 sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 510, 1174(d), 1182.12, 1194,
5 1197, 1197.1, 1198, 1198.5, 1199, and 2810.5, as well as all applicable IWC Wage Orders;

6 4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a),
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 203, 204, 223, 225.5, 226(a), 226(c), 226.7, 510, 1174(d),
9 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, and 2810.5, as well as all applicable IWC Wage
10 Orders;

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

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

14 Dated: August 22, 2022

Respectfully submitted,

15 LAW OFFICES OF MARK YABLONOVICH

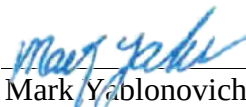
16
17 By: 
18 Mark Yablonoich
19 Tony Roberts
20 Attorneys for Plaintiff Lilian Moreno, a proxy for
21 the State of California as an aggrieved employee
22 pursuant to the Private Attorneys General Act
23
24
25
26
27
28

EXHIBIT 1

Lilian Moreno v. Farooqi Food Management, Inc., et al.

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511
TELEPHONE: (310) 286-0246
FACSIMILE: (310) 407-5391

June 17, 2022

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Lilian Moreno v. Farooqi Food Management, Inc. dba Denny's, Inc., et al.*

Dear PAGA Administrator:

This law firm represents Lilian Moreno ("Ms. Moreno") in connection with her claims under the California Labor Code against her former employer Farooqi Food Management, Inc. dba Denny's ("Farooqi" or "Employer(s)").

Employer may be contacted directly at:

Farooqi Food Management, Inc. dba Denny's
6080 Mission Gorge Road
San Diego, CA 92120

Denny's, Inc.
2203 Del La Valle
Del Mar, CA 92014

Farooqi Food Management, Inc.
6908 Miramar Road
San Diego, CA 92121

Denny's, Inc.
203 E. Main Street
Spartanburg, SC 29319

Ms. Moreno intends to seek civil penalties, attorneys' fees, costs, and all other available relief for Farooqi's violations of the California Labor Code, which are recoverable under Sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Moreno seeks relief on behalf of herself, the State of California, and other persons who are or were employed by Farooqi in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement during the relevant time period which begins one year prior to the date of this notice ("Aggrieved Employees"). Ms. Moreno sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Farooqi employed Ms. Moreno from approximately April 24, 2021, to approximately September 18, 2021, as a non-exempt, hourly-paid service assistant at Farooqi's Denny's located in San Diego. Ms. Moreno's work schedule varied. On some occasions she worked shifts that were five or six hours and other occasions she worked shifts that were eight hours or longer. Ms. Moreno's job duties included, but were not limited to, cleaning, washing dishes, and bussing tables.

Re: *Moreno v. Farooqi Food Management, Inc. dba Denny's, Inc., et al.*
June 17, 2022
Page 2 of 11

Farooqi committed one or more of the following Labor Code violations against Ms. Moreno and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Farooqi’s Company-Wide and Uniform Payroll and Human Resources Practices

Farooqi operates numerous of restaurants in California, including in San Diego, Escondido, and Chula Vista, California. Upon information and belief, Farooqi maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for Farooqi in California, including Ms. Moreno and other Aggrieved Employees. At all relevant times, Farooqi issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Moreno and other Aggrieved Employees, regardless of their location, position, or job duties.

Upon information and belief, Farooqi maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for Farooqi in California, including Ms. Moreno and other Aggrieved Employees. Further, Farooqi issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or the manner in which each employee’s employment ended. Farooqi’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, Farooqi has utilized the same methods and formulas when calculating any wages and other remunerations owed to Ms. Moreno and other Aggrieved Employees in California.

Violations of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations Title 8, section 11050 (“Wage Order No. 5”),² require Farooqi to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work, at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that Farooqi are required to pay employees working more than twelve hours in a day, or in excess of eight hours on the seventh consecutive day, overtime compensation at a rate

¹ These facts, theories, and claims are based on Ms. Moreno’s experience and counsel’s review of those records currently available relating to Ms. Moreno’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employees of the law’s requirements, or because the employer effectively hid the violations. Thus, Ms. Moreno reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

² To the extent any other Wage Order applies to any of the claims in this letter, Farooqi also violated those wage orders.

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of two times their regular rate of pay.

Based on information and belief, Farooqi failed to pay all overtime wages owed to Ms. Moreno and other Aggrieved Employees. During the relevant time period, Ms. Moreno and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (or twelve) hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work (or in excess of eight hours on the seventh consecutive day of work), sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. Aggrieved Employees have been subject to Farooqi's control during pre-shift and post-shift times, as well as during unpaid meal periods resulting in time where they are not getting paid, which, when working overtime-eligible shifts, results in underpaid overtime compensation. Based on information and belief, not all recorded work hours were paid because of inaccurate timekeeping policies and practices. As a result, Ms. Moreno believes the hours she and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Ms. Moreno and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

Farooqi knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Moreno and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of Farooqi, and/or were suffered or permitted to perform work for which they were not paid. Farooqi also knew, or should have known, that it did not compensate Ms. Moreno and other Aggrieved Employees for off-the-clock work, or all hours worked. Because Ms. Moreno and other Aggrieved Employees sometimes worked shifts longer than eight or twelve hours a day, more than forty hours a week, and/or seven consecutive days (or in excess of eight hours on the seventh consecutive day), some of the unrecorded work qualified for overtime premium pay. At other times, Farooqi simply did not pay for all the hours that were recorded. Therefore, Ms. Moreno and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Farooqi's failure to pay Ms. Moreno 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 and the applicable Wage Order.³

Based on the foregoing, Ms. Moreno and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

³ To the extent employees were paid bonuses or incentives, those payments have not been included in Farooqi's regular rate of pay for calculating overtime wages and has resulted in an underpayment of overtime wages.

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Violations of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11050, Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198, as well as the applicable Wage Order require Farooqi to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order 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, subd. 2(K) (defining “Hours Worked”).

Farooqi has not paid for all of the time that Ms. Moreno and Aggrieved Employees have worked throughout the day including all time in the workday when the employees were performing work tasks subject to the control of Farooqi. Ms. Moreno and other Aggrieved Employees are subjected to Farooqi’s control pre-shift, post-shift, and throughout the workday.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Farooqi did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order.

Ms. Moreno and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5,⁴ 1194, 1197.1 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11050 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and the applicable Wage Order require Farooqi to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee’s regular rate of compensation for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, an employee’s first meal period must start no later than the end of an employee’s fifth hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11050, subd. 11. Labor Code sections 226.7 and 512(a) also require Farooqi to provide a second meal period of not less than thirty minutes if an

⁴ Labor Code section 2699.3(c) permits aggrieved employees, including Ms. Moreno, to recover civil penalties for violations of those Labor Code sections not found in Section 2699.5, including Section 225.5.

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employee works over ten hours in a day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was taken.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable 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 (3½) hours. Cal. Code Regs. tit. 8, § 11050, subd. 12. To comply with its obligation to provide rest periods under Labor Code section 226.7 and the applicable Wage Order, an employer must “relinquish any control over how employees spend their break time and relieve their employees of all duties. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

Farooqi has failed to provide meal periods and authorize and permit rest periods to Ms. Moreno and other Aggrieved Employees. As a matter of policy and practice, Farooqi has not provided Ms. Moreno and other Aggrieved Employees with full 30-minute meal periods and 10-minute rest periods for each day worked where they are free from Farooqi’s required duties and control. Farooqi has subjected Ms. Moreno and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods.

Farooqi knew or should have known that as a result of its policies and/or practices, Ms. Moreno and other Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and rest periods and that they did not receive timely meal periods and rest periods. As a result, Ms. Moreno and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

Farooqi has also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Moreno and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Moreno and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based on information and belief, Ms. Moreno and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided.⁵

⁵ To the extent that Farooqi did pay meal period and/or rest period premium wages to Ms. Moreno and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based on information and belief, to the extent employees were paid bonuses or incentives, those payments have not been included in Farooqi’s regular rate of compensation for calculating meal period and/or rest period

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Accordingly, Farooqi has failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums, in violation of Labor Code sections 226.7, 512, and 1198 and the applicable Wage Order. Ms. Moreno and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 204

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. 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, 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 calendar days following the close of the payroll period.

During the relevant time period, Farooqi did not pay Ms. Moreno and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages, within the time periods specified by Labor Code section 204.

Ms. Moreno and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 226

Labor Code section 226(a) requires employers to keep and furnish accurate and complete employment records. Farooqi has not provided Ms. Moreno and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."). Rather, 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).

premiums and has resulted in an underpayment of meal period and/or rest period premium wages.

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Farooqi has provided Ms. Moreno and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Farooqi has violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Farooqi has not recorded all the hours Ms. Moreno and other Aggrieved Employees worked and/or paid all hours recorded, Farooqi has not listed the correct amount of gross wages and net wages earned by Ms. Moreno and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. Farooqi also has not accurately listed the total hours worked by Ms. Moreno and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

Furthermore, because Farooqi has failed to pay all meal period and rest period premiums to Ms. Moreno and other Aggrieved Employees, Farooqi has not listed the correct amount of gross wages and net wages earned by Ms. Moreno and other Aggrieved Employees in violation of Sections 226(a)(1) and (5).

Because Farooqi has failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate on wage statements, Ms. Moreno 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, and were given confusing and/or incomplete information about their employer. Instead, Ms. Moreno 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.

Labor Code section 226(c) provides as follows: “An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Ms. Moreno requested that Farooqi produce her employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and Section 1198.5 which requires an employer to produce records within 30 days. Farooqi did not fully comply because the records were incomplete. Labor Code section 2699.3(c) permits aggrieved employees, including Ms. Moreno, to recover civil penalties for Labor Code sections 226(c) and 1198.5 violations.

Ms. Moreno and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest for violations of Labor Code sections 226(a), 226(c) and 1198.5, pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

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Violations of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11050 Subdivision 7

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, Farooqi willfully failed to maintain accurate payroll records for Ms. Moreno and other Aggrieved Employees showing the daily hours they have worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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 Orders. 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 Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11050, subd. 7. During the relevant time period, Farooqi failed, on a company-wide basis, to keep accurate records of shifts and meal period start and stop times and total daily hours for Ms. Moreno and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

Due to Farooqi’s failure to maintain accurate payroll and time records, Ms. Moreno and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 201, 202, and 203

Labor Code sections 201-202⁶ 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

Farooqi failed to pay Ms. Moreno and other Aggrieved Employees who are no longer employed by Farooqi all their earned wages at the time of discharge, or within seventy-two hours of their

⁶ Ms. Moreno also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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leaving Farooqi's employment, in violation of Labor Code sections 201-202.

Furthermore, Farooqi has not paid Ms. Moreno and other Aggrieved Employees who are no longer employed by Farooqi all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Farooqi's employment, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

On or about September 5, 2021, Plaintiff provided two-weeks' notice of her resignation, indicating her last day of work would be September 18, 2021. However, to this day, Farooqi has failed to pay Plaintiff her final pay.

As a result of Farooqi's violations of Labor Code sections 201-202, Ms. Moreno and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 201-203 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 1198 and 2810.5(a)(1)

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 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, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime; any allowances claimed as part of the minimum wage, including meal or lodging allowances the regular payday designated by the employer; and the name of the employer, including any "doing business as" names used by the employer as well as the employer's physical and mailing address(es) and telephone number. 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.

On information and belief, Farooqi failed to provide Ms. Moreno and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Farooqi failed to provide Ms. Moreno and other Aggrieved Employees with written notice of basic information regarding their employment with Farooqi, such as 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.

As a result of Farooqi's violations of Sections 1198 and 2810.5, Ms. Moreno and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

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Violations of California Labor Code Section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”⁷ 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.” Farooqi, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Moreno’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth herein.

Pursuant to Labor Code section 2699(f) and the other Labor Code sections as set forth above, Ms. Moreno seeks recovery of applicable civil penalties. In the alternative to the penalties above, Ms. Moreno seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code sections 558(a)(1) and 558(a)(2) should such provisions be applicable.

* * *

Accordingly, Ms. Moreno seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Moreno, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against Farooqi for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders, as well as Sections 225.5, 226(c), 1198.5, 2810.5, which are ‘curable’ violations pursuant to Section 2699.3(c)(2)(A).

Therefore, on behalf of the State of California and all Aggrieved Employees, Ms. Moreno seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

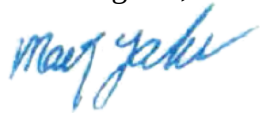
Thank you for your attention to this matter. If you have any questions, please contact me at the phone number, address, or email below:

⁷ Ms. Moreno does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

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Best Regards,



Mark Yablonovich

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203 E. Main Street
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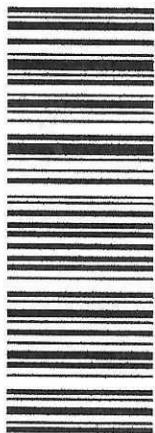
Annette Gomez
Agent for Service of Process for Farooqi Food Management, Inc. (C2901434)
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LAW OFFICES OF

MARK YABLONOVICH

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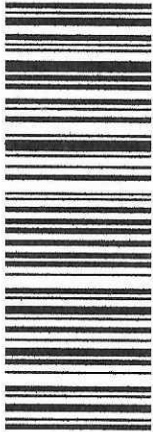
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☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	
\$	
Total Postage and Fees	
\$	
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
See Reverse for Instructions	

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Denny's, Inc.
2203 Del La Valle
Del Mar, CA 92014



9590 9402 6413 0303 4867 23

2. Article Number (Transfer from service label)

7021 1970 0000 6494 7432

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
If YES, enter delivery address below: ☐ No

3. Service Type

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

Domestic Return Receipt

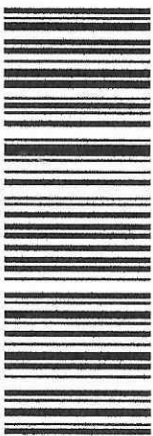
PS Form 3811, July 2020 PSN 7530-02-000-9053

2E42 4649 0000 0267 1202

LAW OFFICES OF

MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511



7021 1970 0000 6494 7449

Farooqi Food Management, Inc.
6908 Miramar Road
San Diego, CA 92121

B47186.03
\$7.53 0
US POSTAGE
FIRST-CLASS
062S0012374044
FROM 90212



U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee		Postmark Here	
Extra Services & Fees (check box, add fee as appropriate)			
☐ Return Receipt (hardcopy)	\$		
☐ Return Receipt (electronic)	\$		
☐ Certified Mail Restricted Delivery	\$		
☐ Adult Signature Required	\$		
☐ Adult Signature Restricted Delivery	\$		
Postage			
Total Postage and Fees			
Sent To			
Street and Apt. No., or PO Box No.			
City, State, ZIP+4®			
PS Form 3800, April 2015 PSN 7530-02-000-9047		See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Farooqi Food Management, Inc.
6908 Miramar Road
San Diego, CA 92121



9590 9402 6413 0303 4867 30

2. Article Number (Transfer from service label)

7021 1970 0000 6494 7449

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	

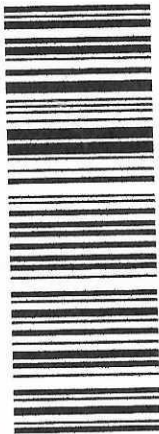
3. Service Type	☐ Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery
☒ Certified Mail®	☒ Signature Confirmation™
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery	☐ Insured Mail
☐ Collect on Delivery Restricted Delivery	☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

LAW OFFICES OF

MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-25



7021 1970 0000 6494 8880

Annette Gomez
Agent for Service of Process for Farooqi Food Management, Inc. (C2901434)
9449 Balboa Avenue, Suite 310
San Diego, CA 92123

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT

Domestic Mail Only

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OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Sent To

Street and Apt. No., or PO Box No.

City, State, Zip+4[®]

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

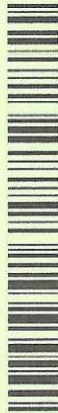
Postmark
Here

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Annette Gomez
Agent for Service of Process for Farooqi Food
Management, Inc.
9449 Balboa Avenue, Suite 310
San Diego, CA 92123



9590 9402 6413 0303 4867 09

2. Article Number (Transfer from service label)

7021 1970 0000 6494 8880

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

☐ No

If YES, enter delivery address below:

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express[®]

☐ Registered MailTM

☐ Registered Mail Restricted Delivery

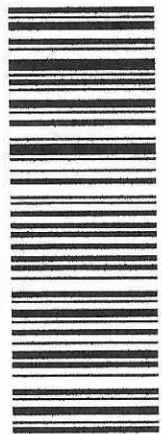
☒ Signature ConfirmationTM

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

LAW OFFICES OF
MARK YABLONOVICH

9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511



7021 1970 0000 6494 7456

Farooqi Food Management, Inc. dba Denny's
6080 Mission Gorge Road
San Diego, CA 92120

B47186 04
\$7.53 0
US POSTAGE
FIRST-CLASS
062S0012374044
FROM 90212



**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com™.

OFFICIAL USE

Certified Mail Fee		Postmark Here
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		
Total Postage and Fees		
Sent To		
Street and Apt. No., or PO Box No.		
City, State, ZIP+4®		

See Reverse for Instructions

PS Form 3800, April 2015 PSN 7530-02-000-9047

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Farooqi Food Management, Inc.
dba Denny's
6080 Mission Gorge Road
San Diego, CA 92120



9590 9402 6413 0303 4867 54

2. Article Number (Transfer from service label)

7021 1970 0000 6494 7456

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:

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <u>[Signature]</u> B. Received by (Printed Name) <u>[Blank]</u> C. Date of Delivery <u>6/1/2021</u> D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
1. Article Addressed to: <u>Denny's, Inc.</u> <u>203 E. Main Street</u> <u>Spartanburg, SC 29319</u>		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☒ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) <u>7021 1970 0000 6494 7555</u>		Domestic Return Receipt	
PS Form 3811, July 2020 PSN 7530-02-000-9053			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <u>[Signature]</u> B. Received by (Printed Name) <u>C. 13</u> C. Date of Delivery <u>6-21</u> D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
1. Article Addressed to: <u>Annette Gomez</u> <u>Agent for Service for Farcoqi Food</u> <u>Management, Inc.</u> <u>9449 Balboa Avenue, Suite 310</u> <u>San Diego, CA 92123</u>		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☒ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) <u>7021 1970 0000 6494 8880</u>		Domestic Return Receipt	
PS Form 3811, July 2020 PSN 7530-02-000-9053			