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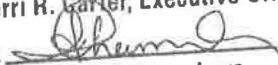
12 Attorneys for Plaintiff Alejandro Valenzuela

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 31 2016

Sherri R. Carter, Executive Office/Clerk
By: , Deputy
Ishayla Chambers

15 ALEJANDRO VALENZUELA, as an
16 aggrieved employee pursuant to the Private
17 Attorneys General Act ("PAGA"),

18 Plaintiff,

19 vs.

20 URGP, LLC, a California limited liability
21 company; A.F. RESTAURANT
22 CONSULTING GROUP, INC., a California
23 corporation; COMESA 92626, LLC, a
24 California limited liability company;
25 RAIDER 94612, LLC, a California limited
26 liability company; ROSEY SPOT 91105,
27 LLC, a California limited liability
28 company; TALK SHOW 91505, LLC, a
California limited liability company;
TOAKS 91362, LLC, a California limited
liability company; U-KO GROVE, LLC, a
California limited liability company;
UMAMI BURGER ANAHEIM, LLC, a
California limited liability company;
UMAMI BURGER HOLLYWOOD
RESTAURANT, LLC, a California limited
liability company; UMAMI BURGER
HOLLYWOOD, LLC, a California limited
liability company; UMAMI BURGER
LICENSING USA, LLC, a Delaware
limited liability company; UMAMI
BURGER SANTA MONICA, LLC, a
California limited liability company;

Case No.:

PAGA ENFORCEMENT ACTION

COMPLAINT

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

Jury Trial Demanded

BC 622088 BY FAX

1 UMAMI BURGER SF, LLC, a Delaware
2 limited liability company; UMAMI
3 BURGER URBAN JUNGLE, LLC, a
4 California limited liability company;
5 UMAMI BURGER VALLI, LLC, a
6 California limited liability company;
7 UMAMI BURGER, LLC, a California
8 limited liability company; UMAMI
9 HERMOSA, LLC, a California limited
10 liability company; UMAMI LAGUNA,
11 LLC, a California limited liability
12 company; UMAMI RESTAURANT
13 GROUP, LLC, a Delaware limited liability
14 company; UMAMICATESSEN, LLC, a
15 California limited liability company;
16 UMAMICATESSEN HOLDINGS, LLC, a
17 Delaware limited liability company;
18 UMAMI-LEVITY, LLC, a California
19 limited liability company; and DOES 1
20 through 10, inclusive,

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Defendants.

1 Plaintiff Alejandro Valenzuela ("Plaintiff"), as an aggrieved employee and on behalf
2 of all other non-party aggrieved employees as set forth herein, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698 *et seq.* ("PAGA") to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as non-exempt, hourly-paid
8 employees and against whom one or more violations of any provision in Division 2 Part 2
9 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
10 applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth
11 in this complaint, at any time between one year prior to the filing of this complaint until
12 judgment ("Aggrieved Employees"). Plaintiff's share of civil penalties sought in this action
13 does not exceed \$75,000.

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

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

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

1 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
2 and occurrences related to this action occurred in this county.

3 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys
4 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
5 general their current or former employers for various civil penalties for violating the
6 California Labor Code.

7 THE PARTIES

8 6. Plaintiff ALEJANDRO VALENZUELA is a resident of Los Angeles,
9 California. Defendants employed Plaintiff as an hourly-paid, non-exempt Front of House
10 (FOH) Lead or Supervisor from about June 2011 to November 2015. During his employment,
11 Plaintiff worked at Defendants’ Umami Burger (Arts District) restaurant location in Los
12 Angeles, California. As an FOH Lead/Supervisor, Plaintiff typically worked approximately 10
13 hours or more per day, five (5) or six (6) days per week, and approximately 50 hours or more
14 per week. At the time Plaintiff’s employment with Defendants ended, he earned an hourly
15 rate of \$11.52.

16 7. Defendant URGP, LLC (“URGP”) is, on information and belief, a California
17 limited liability company doing business in California, with its principal place of business in
18 Los Angeles, California, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county, the State of California, and/or the various
20 states of the United States of America.

21 8. Defendant A.F. RESTAURANT CONSULTING GROUP, INC. (“A.F.”) is, on
22 information and belief, a California corporation doing business in California, with its
23 principal place of business in Los Angeles, California, and at all times hereinafter mentioned,
24 an employer whose employees are engaged throughout this county, the State of California,
25 and/or the various states of the United States of America.

26 9. Defendant COMESA 92626, LLC (“COMESA”) is, on information and belief,
27 a California limited liability company doing business in California, with its principal place of
28 business in Los Angeles, California, and at all times hereinafter mentioned, an employer

1 whose employees are engaged throughout this county, the State of California, and/or the
2 various states of the United States of America.

3 10. Defendant RAIDER 94612, LLC ("RAIDER") is, on information and belief, a
4 California limited liability company doing business in California, with its principal place of
5 business in Los Angeles, California, and at all times hereinafter mentioned, an employer
6 whose employees are engaged throughout this county, the State of California, and/or the
7 various states of the United States of America.

8 11. Defendant ROSEY SPOT 91105, LLC ("ROSEY") is, on information and
9 belief, a California limited liability company doing business in California, with its principal
10 place of business in Los Angeles, California, and at all times hereinafter mentioned, an
11 employer whose employees are engaged throughout this county, the State of California, and/or
12 the various states of the United States of America.

13 12. Defendant TALK SHOW 91505, LLC ("TALK SHOW") is, on information
14 and belief, a California limited liability company doing business in California, with its
15 principal place of business in Los Angeles, California, and at all times hereinafter mentioned,
16 an employer whose employees are engaged throughout this county, the State of California,
17 and/or the various states of the United States of America.

18 13. Defendant TOAKS 91362, LLC ("TOAKS") is, on information and belief, a
19 California limited liability company doing business in California, with its principal place of
20 business in Los Angeles, California, and at all times hereinafter mentioned, an employer
21 whose employees are engaged throughout this county, the State of California, and/or the
22 various states of the United States of America.

23 14. Defendant U-KO GROVE, LLC ("U-KO GROVE") is, on information and
24 belief, a California limited liability company doing business in California, with its principal
25 place of business in Los Angeles, California, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county, the State of California, and/or
27 the various states of the United States of America.

28 15. Defendant UMAMI BURGER ANAHEIM, LLC ("UMAMI BURGER

1 ANAHEIM”) is, on information and belief, a California limited liability company doing
2 business in California, with its principal place of business in Los Angeles, California, and at
3 all times hereinafter mentioned, an employer whose employees are engaged throughout this
4 county, the State of California, and/or the various states of the United States of America.

5 16. Defendant UMAMI BURGER HOLLYWOOD RESTAURANT, LLC
6 (“UMAMI BURGER HOLLYWOOD RESTAURANT”) is, on information and belief, a
7 California limited liability company doing business in California, with its principal place of
8 business in Los Angeles, California, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county, the State of California, and/or the
10 various states of the United States of America.

11 17. Defendant UMAMI BURGER HOLLYWOOD, LLC (“UMAMI BURGER
12 HOLLYWOOD”) is, on information and belief, a California limited liability company doing
13 business in California, with its principal place of business in Los Angeles, California, and at
14 all times hereinafter mentioned, an employer whose employees are engaged throughout this
15 county, the State of California, and/or the various states of the United States of America.

16 18. Defendant UMAMI BURGER LICENSING USA, LLC (“UMAMI BURGER
17 LICENSING”) is, on information and belief, a Delaware limited liability company doing
18 business in California, with its principal place of business in Los Angeles, California, and at
19 all times hereinafter mentioned, an employer whose employees are engaged throughout this
20 county, the State of California, and/or the various states of the United States of America.

21 19. Defendant UMAMI BURGER SANTA MONICA, LLC (“UMAMI BURGER
22 SANTA MONICA”) is, on information and belief, a California limited liability company
23 doing business in California, with its principal place of business in Los Angeles, California,
24 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
25 this county, the State of California, and/or the various states of the United States of America.

26 20. Defendant UMAMI BURGER SF, LLC (“UMAMI BURGER SF”) is, on
27 information and belief, a California limited liability company doing business in California,
28 with its principal place of business in Los Angeles, California, and at all times hereinafter

1 mentioned, an employer whose employees are engaged throughout this county, the State of
2 California, and/or the various states of the United States of America.

3 21. Defendant UMAMI BURGER URBAN JUNGLE, LLC ("UMAMI BURGER
4 URBAN JUNGLE") is, on information and belief, a California limited liability company
5 doing business in California, with its principal place of business in Los Angeles, California,
6 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
7 this county, the State of California, and/or the various states of the United States of America.

8 22. Defendant UMAMI BURGER VALLI, LLC ("UMAMI BURGER VALLI") is,
9 on information and belief, a California limited liability company doing business in California,
10 with its principal place of business in Los Angeles, California, and at all times hereinafter
11 mentioned, an employer whose employees are engaged throughout this county, the State of
12 California, and/or the various states of the United States of America.

13 23. Defendant UMAMI BURGER, LLC ("UMAMI BURGER") is, on information
14 and belief, a California limited liability company doing business in California, with its
15 principal place of business in Los Angeles, California, and at all times hereinafter mentioned,
16 an employer whose employees are engaged throughout this county, the State of California,
17 and/or the various states of the United States of America.

18 24. Defendant UMAMI HERMOSA, LLC ("UMAMI HERMOSA") is, on
19 information and belief, a California limited liability company doing business in California,
20 with its principal place of business in Los Angeles, California, and at all times hereinafter
21 mentioned, an employer whose employees are engaged throughout this county, the State of
22 California, and/or the various states of the United States of America.

23 25. Defendant UMAMI LAGUNA, LLC ("UMAMI LAGUNA") is, on information
24 and belief, a California limited liability company doing business in California, with its
25 principal place of business in Los Angeles, California, and at all times hereinafter mentioned,
26 an employer whose employees are engaged throughout this county, the State of California,
27 and/or the various states of the United States of America.

28 26. Defendant UMAMI RESTAURANT GROUP, LLC ("UMAMI

1 RESTAURANT GROUP”) is, on information and belief, a Delaware limited liability
2 company doing business in California, with its principal place of business in Los Angeles,
3 California, and at all times hereinafter mentioned, an employer whose employees are engaged
4 throughout this county, the State of California, and/or the various states of the United States of
5 America.

6 27. Defendant UMAMICATESSEN, LLC (“UMAMICATESSEN”) is, on
7 information and belief, a California limited liability company doing business in California,
8 with its principal place of business in Los Angeles, California, and at all times hereinafter
9 mentioned, an employer whose employees are engaged throughout this county, the State of
10 California, and/or the various states of the United States of America.

11 28. Defendant UMAMICATESSEN HOLDINGS, LLC (“UMAMICATESSEN
12 HOLDINGS”) is, on information and belief, a Delaware limited liability company doing
13 business in California, with its principal place of business in Los Angeles, California, and at
14 all times hereinafter mentioned, an employer whose employees are engaged throughout this
15 county, the State of California, and/or the various states of the United States of America.

16 29. Defendant UMAMI-LEVITY, LLC (“UMAMI-LEVITY”) is, on information
17 and belief, a California limited liability company doing business in California, with its
18 principal place of business in Los Angeles, California, and at all times hereinafter mentioned,
19 an employer whose employees are engaged throughout this county, the State of California,
20 and/or the various states of the United States of America.

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

25 31. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 are the partners, agents, owners, shareholders, managers or employees of A.F, COMESA,
27 RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE, UMAMI BURGER
28 ANAHEIM, UMAMI BURGER HOLLYWOOD RESTAURANT, UMAMI BURGER

1 HOLLYWOOD, UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA,
2 UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI BURGER VALLI,
3 UMAMI BURGER, UMAMI HERMOSA, UMAMI LAGUNA, UMAMI RESTAURANT
4 GROUP, UMAMICATESSEN, UMAMICATESSEN HOLDINGS, UMAMI-LEVITY, and
5 URGP.

6 32. Plaintiff is informed and believes, and thereon alleges, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, A.F, COMESA,
8 RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE, UMAMI BURGER
9 ANAHEIM, UMAMI BURGER HOLLYWOOD RESTAURANT, UMAMI BURGER
10 HOLLYWOOD, UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA,
11 UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI BURGER VALLI,
12 UMAMI BURGER, UMAMI HERMOSA, UMAMI LAGUNA, UMAMI RESTAURANT
13 GROUP, UMAMICATESSEN, UMAMICATESSEN HOLDINGS, UMAMI-LEVITY, and
14 URGP and/or DOES 1 through 10 (collectively, "Defendants"), each acting as the agent for
15 the other, with legal authority to act on the other's behalf. The acts of any and all Defendants
16 were in accordance with, and represent, the official policy of Defendants.

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

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

24 35. Plaintiff is informed and believes, and further alleges, that at all relevant times
25 there has existed a unity of interest and ownership between A.F, COMESA, RAIDER,
26 ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE, UMAMI BURGER ANAHEIM,
27 UMAMI BURGER HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD,
28 UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA, UMAMI BURGER

1 SF, UMAMI BURGER URBAN JUNGLE, UMAMI BURGER VALLI, UMAMI BURGER,
2 UMAMI HERMOSA, UMAMI LAGUNA, UMAMI RESTAURANT GROUP,
3 UMAMICATESSEN, UMAMICATESSEN HOLDINGS, UMAMI-LEVITY, and URGP,
4 such that any individuality and separateness between these entities have ceased.

5 36. URGP is therefore the alter ego of A.F, COMESA, RAIDER, ROSEY SPOT,
6 TALK SHOW, TOAKS, U-KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER
7 HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD, UMAMI BURGER
8 LICENSING, UMAMI BURGER SANTA MONICA, UMAMI BURGER SF, UMAMI
9 BURGER URBAN JUNGLE, UMAMI BURGER VALLI, UMAMI BURGER, UMAMI
10 HERMOSA, UMAMI LAGUNA, UMAMI RESTAURANT GROUP, UMAMICATESSEN,
11 UMAMICATESSEN HOLDINGS, UMAMI-LEVITY, each of which is and at all relevant
12 times has been a mere shell, instrumentality, and conduit through which URGP carries on the
13 business of its restaurant chain in the State of California.

14 37. Adherence to the fiction of the separate existence of URGP as distinct from
15 A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE, UMAMI
16 BURGER ANAHEIM, UMAMI BURGER HOLLYWOOD RESTAURANT, UMAMI
17 BURGER HOLLYWOOD, UMAMI BURGER LICENSING, UMAMI BURGER SANTA
18 MONICA, UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI
19 BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI LAGUNA, UMAMI
20 RESTAURANT GROUP, UMAMICATESSEN, UMAMICATESSEN HOLDINGS, and
21 UMAMI-LEVITY would permit an abuse of the corporate privilege, and would promote
22 injustice by protecting URGP from liability for the wrongful acts committed by it under the
23 name of A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE,
24 UMAMI BURGER ANAHEIM, UMAMI BURGER HOLLYWOOD RESTAURANT,
25 UMAMI BURGER HOLLYWOOD, UMAMI BURGER LICENSING, UMAMI BURGER
26 SANTA MONICA, UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI
27 BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI LAGUNA, UMAMI
28 RESTAURANT GROUP, UMAMICATESSEN, UMAMICATESSEN HOLDINGS,

1 UMAMI-LEVITY apply equally to URGP.

2 38. Plaintiff further alleges, upon information and belief, that Defendant URGP is
3 an alter ego of the other defendants for the additional following reasons:

4 (a) URGP, A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-
5 KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER
6 HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD,
7 UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA,
8 UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI
9 BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI
10 LAGUNA, UMAMI RESTAURANT GROUP, UMAMICATESSEN,
11 UMAMICATESSEN HOLDINGS, and UMAMI-LEVITY utilize the same
12 hiring application for all restaurants, regardless of the location for which the
13 prospective employee is seeking employment;

14 (b) URGP, A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-
15 KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER
16 HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD,
17 UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA,
18 UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI
19 BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI
20 LAGUNA, UMAMI RESTAURANT GROUP, UMAMICATESSEN,
21 UMAMICATESSEN HOLDINGS, and UMAMI-LEVITY all operate a chain
22 of restaurants under the name "Umami Burger"; and

23 (c) URGP, A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-
24 KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER
25 HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD,
26 UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA,
27 UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI
28 BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI

LAGUNA, UMAMI RESTAURANT GROUP, UMAMICATESSEN, UMAMICATESSEN HOLDINGS, and UMAMI-LEVITY each utilize the same marketing coloring scheme and logo featuring an orange burger bun, utilize the same trademarked logo, and share a common website at <http://www.umamiburger.com>; and

(d) URGP, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS, U-KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER HOLLYWOOD RESTAURANT, UMAMI BURGER HOLLYWOOD, UMAMI BURGER LICENSING, UMAMI BURGER SANTA MONICA, UMAMI BURGER SF, UMAMI BURGER URBAN JUNGLE, UMAMI BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI RESTAURANT GROUP, and UMAMICATESSEN each share the same registered business address at 5900 Wilshire Blvd., 30th Fl., Los Angeles, California 90036 and UMAMI LAGUNA and UMAMICATESSEN HOLDINGS each share the same registered business address at 7966 Beverly Blvd., 1st Fl., Los Angeles, California 90048.

PAGA REPRESENTATIVE ALLEGATIONS

39. Defendants are a restaurant chain offering gourmet burgers and craft beers. Defendants currently own and operate approximately 18 restaurant locations throughout California, and other locations nationwide.

40. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Los Angeles, California, which is responsible for conducting Defendants' recruiting and hiring of new employees, collecting and processing all new hire paperwork, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest break policies, to employees throughout California.

41. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies.

1 Upon information and belief, the usage of standardized documents and/or written policies,
2 including new hire documents, indicate that Defendants dictated policies at the corporate level
3 and implemented them company-wide, regardless of their employees' assigned locations or
4 positions. Upon information and belief, Defendants set forth uniform policies and procedures
5 in several documents provided at an employee's time of hire. At the time Plaintiff was hired,
6 he received documents including, but not limited to, New Hire Checklist and Employee/Team
7 Member Handbook, informing him that he would be subject to the policies and rules set forth
8 in the documents provided. At the time Plaintiff was hired, he received several
9 acknowledgment pages for his signature, informing him that he would be subject to the
10 policies and rules listed in the Employee/Team Member Handbook.

11 42. On information and belief, all transactions regarding hiring, terminations,
12 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
13 employees were submitted to and processed by Defendants' HR department in Los Angeles,
14 California. Additionally, on information and belief, Defendants' corporate records, business
15 records, data, and other information related to Defendants, including, in particular, HR records
16 pertaining to Defendants' California employees, are also maintained at Defendants' corporate
17 headquarters in Los Angeles, California.

18 43. Upon information and belief, Defendants require that all new hires and/or
19 employees that have been hurt on the job undergo mandatory drug testing and a physical
20 examination as a condition of employment. Upon information and belief, Defendants'
21 mandatory drug testing and/or physical examination is self-imposed. Defendants provide their
22 newly-hired employees, prospective employees, and/or current employees with the location of
23 the testing facility, select the time and date of the drug test and/or physical examination, and
24 determine the scope of the testing and examination. Defendants require that these newly-hired
25 employees, prospective employees, and/or current employees travel using their own vehicles
26 to the site to undergo the drug test and/or physical examination. Upon information and belief,
27 Defendants do not compensate newly-hired employees, prospective employees, and/or current
28 employees injured on the job for the time it takes to travel to and from the testing facility or

1 for the time it takes to undergo the drug testing and/or physical examination. Upon
2 information and belief, Defendants do not reimburse employees for the travel expenses they
3 incur getting to and from the testing facility.

4 44. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their corporate headquarters in Los Angeles, California, which processes payroll
6 for all non-exempt, hourly-paid employees working for Defendants at their various locations
7 in California, including Plaintiff and other non-party Aggrieved Employees. Based upon
8 information and belief, Defendants issue the same formatted wage statements to all non-
9 exempt, hourly-paid employees in California, irrespective of their work location. Upon
10 information and belief, Defendants process payroll for departing employees in the same
11 manner throughout the State of California, regardless of the manner in which each employee's
12 employment ends.

13 45. Based upon information and belief, Defendants issue the same formatted wage
14 statements to all non-exempt, hourly paid employees in California, irrespective of their
15 location, job category, or specific position. Accordingly, Plaintiff believes that all other non-
16 party Aggrieved Employees throughout California were affected by Defendants'
17 noncompliance with wage statement reporting requirements.

18 46. Defendants continue to employ non-exempt, hourly-paid employees throughout
19 California.

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

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

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

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

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

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

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

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

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

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 55. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of wages upon termination of employment. In violation of the California
7 Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved Employees all
8 wages due, including, but not limited to, overtime wages, minimum wages, and meal and rest
9 period premium wages, within permissible time periods.

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

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

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

26 59. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants

1 had the financial ability to pay such compensation but willfully, knowingly, and intentionally
2 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
3 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

16 63. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees,
17 including Plaintiff, may pursue a civil action arising under PAGA after the following
18 requirements have been met:

- 19 (a) The aggrieved employee shall give written notice by certified mail
20 (hereinafter "Employee's Notice") to the LWDA and the employer of
21 the specific provisions of the California Labor Code alleged to have
22 been violated, including the facts and theories to support the alleged
23 violations.
- 24 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within thirty (30) calendar
27 days of the postmark date of the Employee's Notice. Upon receipt of
28 the LWDA Notice, or if the LWDA Notice is not provided within thirty-

1 three (33) calendar days of the postmark date of the Employee's Notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

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

- 9 (a) The aggrieved employee or representative shall give written notice by
10 certified mail to the LWDA and the employer of the specific provisions
11 of the California Labor Code alleged to have been violated (other than
12 those listed in Section 2699.5), including the facts and theories to
13 support the alleged violation.
- 14 (b) The employer may cure the alleged violation within 33 calendar days of
15 the postmark date of the notice. The employer shall give written notice
16 by certified mail within that period of time to the aggrieved employee or
17 representative and the agency if the alleged violation is cured, including
18 a description of actions taken, and no civil action pursuant to Section
19 2699 may commence. If the alleged violation is not cured within the
20 33-day period, the employee may commence a civil action pursuant to
21 Section 2699.

22 65. On April 26, 2016, Plaintiff provided written notice by certified mail to the
23 LWDA and Defendants A.F, COMESA, RAIDER, ROSEY SPOT, TALK SHOW, TOAKS,
24 U-KO GROVE, UMAMI BURGER ANAHEIM, UMAMI BURGER HOLLYWOOD
25 RESTAURANT, UMAMI BURGER HOLLYWOOD, UMAMI BURGER LICENSING,
26 UMAMI BURGER SANTA MONICA, UMAMI BURGER SF, UMAMI BURGER URBAN
27 JUNGLE, UMAMI BURGER VALLI, UMAMI BURGER, UMAMI HERMOSA, UMAMI
28 LAGUNA, UMAMI RESTAURANT GROUP, UMAMICATESSEN, UMAMICATESSEN

1 HOLDINGS, UMAMI-LEVITY, and URGP of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. As an example, a true
4 and correct copy of Plaintiff's written notice to the LWDA and Defendant URGP dated April
5 26, 2016 is attached hereto as "Exhibit 1," which is similar in content to the Notices sent to
6 each Defendant.

7 66. As of the filing date of this amended complaint, over 33 days have passed since
8 Plaintiff sent the LWDA Notices described above, and the LWDA has not responded that it
9 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

10 67. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
12 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
13 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and
14 2810.5.

15 68. Labor Code section 558(a) provides "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
21 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
22 period for which the employee was underpaid in addition to an amount sufficient to recover
23 underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided for in
24 this section are in addition to any other civil or criminal penalty provided by law."

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

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

71. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party 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, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

72. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of Labor Code sections 1182.12 and 2810.5.

73. Defendants' conduct, as alleged herein, violates the applicable IWC Wage Order and numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violations of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with overtime wages for all hours worked in excess of eight (8) in one day or forty (40) in one week, as set forth below;
- (b) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to

1 compensate Plaintiff and other non-party Aggrieved Employees with at
2 least minimum wages for all hours worked as set forth below;

- 3 (c) Violations of Labor Code sections 226.7, 512(a), 1198, and the
4 applicable IWC wage order for Defendants' failure to provide Plaintiff
5 and other non-party Aggrieved Employees with meal and/or rest
6 periods, as set forth below;
- 7 (d) Violations of Labor Code sections 226(a), 1198, and the applicable IWC
8 wage order for failure to provide accurate and complete wage statements
9 to Plaintiff and other non-party Aggrieved Employees as set forth
10 below;
- 11 (e) Violations of Labor Code sections 1174(d), 1198, and the applicable
12 IWC wage order for failure to maintain payroll records as set forth
13 below;
- 14 (f) Violations of Labor Code sections 201, 202, and 203 for failure to pay
15 all earned wages upon termination as set forth below;
- 16 (g) Violations of Labor Code section 204 for failure to pay all earned wages
17 during employment as set forth below;
- 18 (h) Violations of Labor Code section 2802 for failure to reimburse
19 Plaintiff and other non-party Aggrieved Employees for business
20 expenses necessarily incurred, as set forth below; and
- 21 (i) Violations of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
22 provide written notice of information material to Plaintiff and other non-
23 party Aggrieved Employees' employment with Defendants, as set forth
24 below.

25 **FAILURE TO PAY OVERTIME**

26 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

27 74. California Labor Code section 1198 makes it illegal to employ an employee
28 under conditions of labor that are prohibited by the applicable wage order. California Labor

1 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
2 shall be the . . . standard conditions of labor for employees. The employment of any employee
3 . . . under conditions of labor prohibited by the order is unlawful.”

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

8 76. Specifically, the applicable IWC Wage Order provides that Defendants are and
9 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
10 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
11 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
12 hours in a workweek.

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

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

24 79. During the relevant time period, Defendants willfully failed to pay all overtime
25 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
26 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
27 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
28 hours in a day, in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a

1 workweek, and/or in excess of forty (40) hours in a week, because all hours worked were not
2 recorded.

3 80. During the relevant time period, Defendants had a company-wide policy of
4 staffing their locations strictly based on the labor hours allotted by each location's labor or
5 payroll budget, which was limited to approximately 20% of the sales of each stores' location,
6 which has resulted in and continues to result in chronic understaffing and a lack of break and
7 shift coverage because there were too few employees on duty to handle the workload and
8 attend to guests and customers

9 81. Defendants' company-wide policy and/or practice of understaffing its locations
10 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
11 uninterrupted thirty (30) minute meal periods and led to them working off-the-clock during
12 meal periods to complete their assigned tasks, such as handling cash and counting the money
13 in the register; running food to tables; taking orders and assisting customers; completing daily
14 sales reports and other tracking reports regarding customer complaints and voided sales; and
15 supervising other employees' work. In addition, Defendants did not provide Plaintiff and
16 other non-party Aggrieved Employees with compliant second 30 minute meal periods on days
17 that they worked in excess of 10 hours in one day. Also, Defendants have, on a company-
18 wide basis, failed to schedule Plaintiff and other non-party Aggrieved Employees for meal
19 periods even though they are aware and know that employees are entitled to such meal
20 periods. For example, within the relevant time period, Plaintiff sometimes worked more than
21 eight (8) hours straight before being relieved of his duties to take a meal period. As a result of
22 this company-wide failure to schedule meal periods, Plaintiff and other non-party Aggrieved
23 Employees were rarely, if ever, permitted and authorized to take uninterrupted 30-minute
24 meal periods during shifts to which they were entitled to receive a meal period. Defendants
25 also routinely and effectively clocked out Plaintiff and other non-party Aggrieved Employees
26 for a full 30 minutes even when meal breaks were late, short, and/or interrupted. Plaintiff and
27 other non-party Aggrieved Employees did not sign valid meal break waivers on days that they
28 were entitled to meal periods but were not relieved of all duties.

1 82. In addition, Defendants have a company-wide policy and/or practice of refusing
2 to pay for time spent working off-the-clock before/after the end of an employee's scheduled
3 shift and during meal breaks, even though Plaintiff and other non-party Aggrieved Employees
4 still performed additional duties and were subject to Defendants' control during those times.
5 For example, Plaintiff was frequently required to clock out at his scheduled shift end time and
6 continue working because Defendants were short-staffed. At times, Plaintiff had to continue
7 to work for up to an hour off-the-clock after his shift ended.

8 83. Defendants knew or should have known that as a result of its policies, that
9 Plaintiff and other non-party Aggrieved Employees were performing some of their assigned
10 duties off-the-clock and/or during meal periods and were suffered or permitted to perform
11 work for which they were not paid. Defendants also knew, or should have known, that it did
12 not compensate Plaintiff and other non-party Aggrieved Employees for this off-the-clock
13 work. Because Plaintiff and other non-party Aggrieved Employees sometimes worked shifts
14 of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock
15 work qualified for overtime premium pay. Therefore, Plaintiff and other non-party
16 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
17 worked.

18 84. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 the balance of overtime compensation, as required by California law, violates the provisions
20 of California Labor Code sections 510 and 1198.

21 85. Furthermore, Defendants did not pay Plaintiff and/or other non-party Aggrieved
22 Employees the correct overtime rate for the recorded overtime hours that they generated. In
23 addition to an hourly wage, Defendants paid other non-party Aggrieved Employees incentive
24 pay and/or nondiscretionary bonuses. However, in violation of the California Labor Code,
25 Defendants failed to incorporate all remunerations, including incentive pay and/or
26 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
27 calculating the overtime wage rate. Therefore, during times when Plaintiff and/or other non-
28 party Aggrieved Employees worked overtime and received these other forms of pay,

1 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

2 86. Defendants' failure to pay Plaintiff and/or other non-party Aggrieved
3 Employees the balance of overtime compensation and failure to include all applicable
4 remuneration in calculating the regular rate of pay for overtime pay, as required by California
5 law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and
6 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
7 to sections 558 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

9 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1 AND 1198**

10 87. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
11 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
12 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
13 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
16 Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

17 88. As described above, due to Defendants' scheduling practices, staffing practices,
18 and resultant lack of break coverage, Plaintiff and other non-party Aggrieved Employees were
19 forced to forego meal breaks and/or have their meal breaks interrupted or delayed by work.
20 Moreover, Plaintiff and other non-party Aggrieved Employees were not relieved of all duties
21 such that they could take second 30-minute meal periods on days that they worked in excess
22 of 10 hours in a day. Plaintiff and other non-party Aggrieved Employees were not provided
23 with a second 30-minute meal period on days they worked over 10 hours while employed with
24 Defendants.

25 89. Further, Defendants maintained and implemented a company-wide policy of
26 requiring all newly-hired employees, prospective employees, and/or current employees to
27 undergo mandatory drug testing and/or a physical examination. At all times, Defendants were
28 in control of scheduling the date and time for the drug testing, selecting the provider/facility

1 where the drug testing was to take place, and determining the scope of the physical
2 examination and/or drug test. Defendants gave Plaintiff and other non-party Aggrieved
3 Employees strict instructions to obtain a drug test as a condition of their employment,
4 including when they were injured on the job, and Plaintiff and other non-party Aggrieved
5 Employees underwent drug testing for the sole benefit of Defendants. However, Defendants
6 did not compensate Plaintiff and other non-party Aggrieved Employees for the time they spent
7 traveling to and from drug testing or for the time they spent undergoing drug testing. For
8 example, Plaintiff was instructed by Defendants to travel to a clinic and obtain a drug test.
9 Plaintiff clocked out from his shift, and, following Defendants' instructions, traveled several
10 miles from to the clinic and underwent the drug test. Plaintiff spent approximately one hour at
11 the clinic to obtain the mandatory drug test. Defendants did not compensate Plaintiff for this
12 time or reimburse him for his travel expenses to and from the clinic.

13 90. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
14 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
15 hours did not qualify for overtime premium payment, Defendants did not pay at least
16 minimum wages for those hours worked off-the-clock.

17 91. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
18 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
19 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
20 civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

26 93. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five (5) hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
5 2012).

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

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

15 96. During the relevant time period, Defendants had a company-wide policy and/or
16 practice of failing to schedule Plaintiff and other non-party Aggrieved Employees for meal
17 periods. Additionally, Defendants regularly required Plaintiff and other non-party Aggrieved
18 Employees to clock out for a full 30 minute meal break within the first five (5) hours of work,
19 even when meal breaks were late, short, and/or interrupted. Defendants have understaffed and
20 continue to understaff its restaurant locations pursuant to its labor budget policies, which has
21 resulted in and continues to result in a lack of break coverage. At all times herein mentioned,
22 Defendants knew or should have known that as a result of its staffing policies, Plaintiff and
23 other non-party Aggrieved Employees have been required to perform some of their assigned
24 duties during meal periods and that Defendants did not pay meal period premium wages when
25 meal periods were interrupted. During the relevant time period, Plaintiff has been required to
26 handle cash, count the money in the register, run food to tables, and take orders from and
27 assist customers while clocked out for a meal period due to understaffing. As a result,
28 Plaintiff and other non-party Aggrieved Employees had to work through some or all of their

1 meal periods, have their meal periods interrupted to return to work, and/or wait extended
2 periods of time before taking meal periods.

3 97. For example, Plaintiff was regularly required to clock out for his meal break
4 after five (5) hours of work, but continue working until he was permitted to take his break, if
5 he was permitted to take a meal break at all. Plaintiff sometimes worked eight (8) or more
6 hours before being allowed to take a meal break. When this occurred, Defendants did not take
7 steps to ensure that Plaintiff was compensated for this off-the-clock work and did not provide
8 Plaintiff with premium pay for the non-compliant meal period. Furthermore, Defendants did
9 not provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal
10 periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other
11 non-party Aggrieved Employees did not sign valid meal break waivers on days that they were
12 entitled to meal periods and were not relieved of all duties.

13 98. At all times herein mentioned, Defendants knew or should have known that as a
14 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
15 from being relieved of all duties and required to perform some of their assigned duties during
16 meal periods and that Defendants did not pay Plaintiff and other non-party Aggrieved
17 Employees meal period premium wages when they were late, short, and/or interrupted.

18 99. Moreover, Defendants engaged in a systematic, company-wide policy to not
19 pay meal period premiums. Alternatively, to the extent that Defendants did pay Plaintiff
20 and/or other non-party Aggrieved Employees one (1) additional hour of premium pay for
21 missed meal periods, Defendants did not pay other non-party Aggrieved Employees at the
22 correct rate of pay for premium wages because Defendants failed to include all forms of
23 compensation, such as incentive pay and/or nondiscretionary bonuses, in the regular rate of
24 pay. As a result, to the extent Defendants paid other non-party Aggrieved Employees
25 premium pay for missed meal periods, it did so at a lower rate than required by law. As a
26 result, Defendants failed to provide Plaintiff and/or other non-party Aggrieved Employees
27 compliant meal periods and failed to pay the full meal period premiums due.

28 100. Defendants' conduct violates the applicable IWC Wage Order, and California

1 Labor Code sections 226.7, 512(a) and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to sections 558 and/or
3 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE REST PERIODS**

5 **VIOLATION OF LABOR CODE SECTION 226.7 AND 1198**

6 101. At all relevant times, the applicable IWC Wage Order and California Labor
7 Code sections 226.7 and 1198 were applicable to Plaintiff and other non-party Aggrieved
8 Employees' employment by Defendants.

9 102. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3½) hours.

15 103. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. Pursuant to the applicable IWC Wage Order, Wage Order
18 11020(12)(A), "[a]uthorized rest period time shall be counted as hours worked for which there
19 shall be no deduction from wages." Because rest periods are considered hours worked, they
20 must be compensated.

21 104. During the relevant time period, Defendants' company-wide policies and
22 resultant lack of break coverage prevented Plaintiff and other non-party Aggrieved Employees
23 from being relieved of all duty in order to take compliant rest periods. Defendants similarly
24 had no practice of scheduling rest periods for Plaintiff and other non-party Aggrieved
25 Employees. As a result, Plaintiff and other non-party Aggrieved Employees would work
26 shifts in excess of 3.5 hours, and in excess of 6 hours, without receiving proper ten (10)
27 minute rest periods to which they were entitled. Plaintiff and other non-party Aggrieved
28 Employees were forced to forego and work through rest breaks, which were not scheduled, in

1 order to perform duties such as handling cash and counting the money in the register, running
2 food to tables, and taking orders from and assisting customers.

3 105. At the same time, Defendants implemented a company-wide policy to not pay
4 rest period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and/or
5 other non-party Aggrieved Employees one (1) additional hour of premium pay for missed rest
6 periods, Defendants did not pay other non-party Aggrieved Employees at the correct rate of
7 pay for premium wages because Defendants failed to include all forms of compensation, such
8 as incentive pay and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the
9 extent Defendants paid other non-party Aggrieved Employees premium pay for missed rest
10 periods, it did so at a lower rate than required by law. As a result, Plaintiff and/or other non-
11 party Aggrieved Employees were denied rest periods and failed to pay the full rest period
12 premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

13 106. Defendants' conduct violates the applicable IWC Wage Order and California
14 Labor Code sections 226.7 and 1198. Plaintiff and other non-party Aggrieved Employees are
15 therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

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

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

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

23 108. During the relevant time period, Defendants have knowingly and intentionally
24 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete and
25 inaccurate wage statements. Specifically, Defendants violated sections 226(a)(8) and
26 226(a)(9). According to Plaintiff's paystubs, Defendants' legal name is "URGP LLC," but,
27 according to the California Secretary of State's website, the correct legal name is "URGP,
28 LLC" in violation of Labor Code section 226(a)(8). Additionally, Defendants failed to

1 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
2 of pay for premium wages, including for double time, in violation of section 226(a)(9).
3 Defendants listed a double time rate (“Double Time”) of \$11.41 per hour on Plaintiff’s
4 paystub, when his correct rate of pay was actually higher.

5 109. The wage statement deficiencies also include, among other things, failing to list
6 gross wages earned; failing to list total hours worked by employees; failing to list the number
7 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
8 basis; failing to list all deductions; failing to list net wages earned; failing to list the name of
9 the employee and only the last four digits of his or her social security number or an employee
10 identification number other than a social security number; failing to list the inclusive dates of
11 the period for which employees were paid; and/or failing to state all hours worked as a result
12 of not recording or stating the hours they worked off-the-clock.

13 110. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[keep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments...” During the relevant time period, and in violation of Labor Code section
20 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
21 other non-party Aggrieved Employees showing the daily hours they worked and the wages
22 paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep records of meal period start and
3 stop times for Plaintiff and other non-party Aggrieved Employees in violation of section 1198.

4 112. Because Defendants' violations of 226(a), 1174(d), and 1198 were committed
5 against Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party
6 Aggrieved Employees are entitled to recover civil penalties pursuant to sections 226(e), 226.3,
7 1174.5, and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY WAGES UPON TERMINATION**
9 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

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

22 115. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
23 who are no longer employed by Defendants their wages earned and unpaid at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
25 Labor Code sections 201 and 202.

26 116. Therefore, Plaintiff and other non-party Aggrieved Employees are entitled to
27 recover civil penalties pursuant to section 2699(a), (f), and (g).

28 //

1 //

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

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

12 118. At all relevant times herein, Labor Code section 204 provides that all wages
13 earned for labor in excess of the normal work period shall be paid no later than the payday for
14 the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section
15 204 provides that the requirements of this section are deemed satisfied by the payment of
16 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
17 seven (7) calendar days following the close of the payroll period.

18 119. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
20 wages, minimum wages, and meal and rest period premium wages, within the time periods
21 specified by California Labor Code section 204. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to sections 210 and/or
23 2699(a), (f), and (g).

24 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

25 **VIOLATION OF LABOR CODE SECTION 2802**

26 120. At all times herein set forth, California Labor Code section 2802 requires
27 employers to pay for all necessary expenditures and losses incurred by the employee in the
28 performance of his or her job. The purpose of Labor Code section 2802 is to prevent

1 employers from passing off their cost of doing business and operating expenses on to their
2 employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).
3 The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or
4 equipment are required by the employer or are necessary to the performance of a job, such
5 tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage provided herein may be
7 required to provide and maintain hand tools and equipment customarily required by the trade
8 or craft."

9 121. During the relevant time period, Plaintiff and other non-party Aggrieved
10 Employees incurred necessary business-related expenses and costs that were not fully
11 reimbursed by Defendants, including, but not limited to, the cost for cellular phone usage and
12 travel expenses. Defendants, on a company-wide basis, required that Plaintiff and other non-
13 party Aggrieved Employees utilize their own personal cell phones and cell phone data to carry
14 out their job duties, but Defendants failed to reimburse them for the costs of their cell phone
15 plans and/or data plans. For example, Plaintiff was required to use his personal cellular phone
16 in order to carry out his work, such as communicating with other restaurant locations, when
17 his restaurant's phone was in use handling customer orders or when he was on the road
18 driving to other restaurants and needed information. Although Defendants required Plaintiff
19 to regularly utilize his personal cellular phone to carry out work-related responsibilities,
20 Defendants failed to reimburse him for this cost.

21 122. Additionally, Plaintiff and other non-party Aggrieved Employees were also
22 required by Defendants to utilize their own personal vehicles to carry out company business,
23 but Defendants failed to reimburse them for the cost of travel, including mileage. For
24 example, Plaintiff was sometimes required to drive using his own vehicle to other restaurant
25 locations to pick up restaurant supplies. Plaintiff drove an average of 55 miles per week
26 traveling to other restaurants to pick up supplies needed at his restaurant, such as cheese,
27 hamburger buns, meat, produce, and beverages. Although Defendants required that Plaintiff
28 use his own vehicle and complete this task as part of his job duties, Defendants never

1 reimbursed him for his mileage and travel expenses.

2 123. Further, as mentioned, Defendants required Plaintiff and other non-party
3 Aggrieved Employees to travel in their own personal vehicles to designated clinics to undergo
4 drug testing and/or physical examinations and did not reimburse them for their travel
5 expenses. For example, after he was injured at work, Plaintiff drove several miles from the
6 restaurant location to obtain a mandatory drug test and/or physical examination per
7 Defendants' instructions but was not reimbursed for his mileage to and from the medical
8 facility. Defendants engaged in a systematic, company-wide policy not to reimburse Plaintiff
9 and other non-party Aggrieved Employees for these travel expenses.

10 124. Defendants could have provided Plaintiff and/or other non-party Aggrieved
11 Employees with the actual tools for use on the job, including company phones and devices,
12 reimbursements for their cell phone usage, gas expenses, and company vehicles to be used for
13 fulfilling work-related tasks, including transportation to other restaurants and to testing
14 facilities, or reimbursed them for their travel-related expenses. Instead, Defendants passed
15 these expenses off on to Plaintiff and/or other non-party Aggrieved Employees.

16 125. Defendants' policy and/or practice of passing its operating costs on to Plaintiff
17 and/or other non-party Aggrieved Employees by requiring that they use their own personal
18 cellular phones for business and by failing to reimburse all travel expenses, including when
19 they travel using their own personal vehicles to obtain physical examinations and/or drug
20 tests, is in violation of California Labor Code section 2802. Defendants have intentionally
21 and willfully failed to fully reimburse Plaintiff and/or other non-party Aggrieved Employees
22 for necessary business-related expenses and costs.

23 126. Plaintiff and/or other non-party Aggrieved Employees are entitled to recover
24 civil penalties pursuant to Labor Code section 2699(f)-(g).

25 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
26 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

27 127. California's Wage Theft Prevention Act was enacted to ensure that employers
28 provide employees with basic information material to their employment relationship at the

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

10 128. During the relevant time period, Defendants failed to provide written notice to
11 Plaintiff and other non-party Aggrieved Employees that lists the requisite information set forth
12 in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis, including a statement
13 that the employee may accrue and use sick leave.

14 129. Defendants' failure to provide Plaintiff and other non-party Aggrieved
15 Employees with written notice of basic information regarding their employment with
16 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
17 Aggrieved Employees are therefore entitled to recover penalties, attorney's fees, costs, and
18 interest thereon, pursuant to Labor Code section 2699(f)-(g).

19 **REQUEST FOR JURY TRIAL**

20 Plaintiff requests a trial by jury.

21 **PRAYER FOR RELIEF**

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

24 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
25 (\$25,000).

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

27 2. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code sections as to Plaintiff and/or other non-party Aggrieved

1 Employees: 510 and 1198 (by failing to pay all overtime wages); 1182.12, 1194, 1197,
2 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7,
3 512(a), and 1198 (by failing to provide meal or rest periods); 226(a) and 1198 (by failing to
4 provide accurate and complete wage statements); 1174(d) and 1198 (by failing to maintain
5 accurate and complete payroll records); 201, 202, 203 (by failing timely to pay all unpaid
6 wages upon termination); 204 (by failing timely to pay all earned wages during employment);
7 2802 (by failing to reimburse employees for business expenses necessarily incurred); and
8 2810.5 (by failing to provide written notice of material terms of employment);

9 3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558,
10 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
11 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1,
12 1198, 2802, and 2810.5;

13 4. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194,
16 1197, 1197.1, 1198, 2802, and 2810.5;

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

18 6. For such other and further relief as the Court may deem equitable and
19 appropriate.
20

21 Dated: May 31, 2016

Respectfully submitted,

Capstone Law APC

23
24 By: 

Arnab Banerjee
Brandon K. Brouillette
Ruhandy Glezakos

Attorneys for Plaintiff Alejandro Valenzuela

EXHIBIT 1



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April 26, 2016

VIA U.S. CERTIFIED MAIL

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94162

Subject: *Alejandro Valenzuela v. URGP, LLC*

Dear PAGA Administrator:

This office represents Alejandro Valenzuela in connection with his claims under the California Labor Code. Mr. Valenzuela was an employee of URGP, LLC d/b/a Umami Burger ("UMAMI").

The employer may be contacted directly:

URGP, LLC
5900 WILSHIRE BLVD 30TH FL
LOS ANGELES CA 90036

Mr. Valenzuela intends to seek civil penalties, attorneys' fees, costs and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Valenzuela seeks relief on behalf of himself, the State of California, and other persons who were employed by UMAMI as a non-exempt, hourly-paid employee in California ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

UMAMI employed Mr. Valenzuela as an hourly, non-exempt Front of House (FOH) Lead or Supervisor from approximately June 2011 to November 2015. Mr. Valenzuela worked for UMAMI at their Umami Burger (Arts District) restaurant location in Los Angeles, California. As an FOH Lead/Supervisor, Mr. Valenzuela typically worked 10 hours or more per day, five (5) or six (6) days per week, and approximately 50 hours or more per week. At the time Mr. Valenzuela's employment with UMAMI ended, he earned approximately \$11.52 per hour. Mr. Valenzuela's relevant claims are as follows:

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

UMAMI is a California limited liability company which is a restaurant chain offering gourmet burgers and craft beers. Upon information and belief, UMAMI maintains a centralized Human Resources (HR) department at their corporate headquarters in Los Angeles, California, for all non-exempt, hourly paid employees working for UMAMI at their various locations in California, including Mr. Valenzuela and other aggrieved employees. At all relevant times, UMAMI issued and maintained uniform, standardized practices and procedures for all non-exempt, hourly-paid employees in California, including Mr. Valenzuela and other aggrieved employees, regardless of their location or position.

Upon information and belief, UMAMI maintains a centralized Payroll department at their corporate headquarters in Los Angeles, California, which processes payroll for all non-exempt, hourly paid employees working for UMAMI at their various locations in California, including Mr. Valenzuela and other aggrieved employees. At all relevant times, UMAMI has processed payroll and issued the same formatted wage statements in the same manner for all non-exempt, hourly-paid employees working in California, including Mr. Valenzuela and other aggrieved employees, regardless of their location, position, or manner in which each employee's employment ended.

Violation of California Labor Code §§ 510 and 1198

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

UMAMI willfully and systematically failed to pay all overtime wages owed to Mr. Valenzuela and other aggrieved employees. During the relevant time period, Mr. Valenzuela and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded. UMAMI has a company-wide policy of staffing their locations strictly based on the labor hours allotted by each location's labor or payroll budget, which was limited to approximately 20% of the sales of each store's location, which has resulted in and continues to result in chronic understaffing and a lack of break and shift coverage because there were too few employees on duty to handle the workload and attend to guests and customers.

UMAMI's company-wide policy and/or practice of understaffing its locations prevented Mr. Valenzuela and other aggrieved employees from taking all timely, uninterrupted thirty (30) minute meal periods and led to them working off-the-clock during meal periods to complete their assigned tasks, such as handling cash and counting the money in the register; running food to tables; taking orders and assisting customers; completing daily sales reports and other tracking reports regarding customer complaints and voided sales; and supervising other employees' work. In addition, UMAMI did not provide aggrieved employees with compliant second 30 minute meal periods on days that they worked in excess of 10 hours in one day. Also, UMAMI has, on a company-wide basis, failed

to schedule aggrieved employees for meal periods even though it is aware and knows that employees are entitled to such meal periods. For example, within the relevant time period, Mr. Valenzuela frequently worked more than five (5) hours straight before being relieved of his duties to take a meal period. As a result of this company-wide failure to schedule meal periods, Mr. Valenzuela and other aggrieved employees were rarely, if ever, permitted and authorized to take uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a meal period. UMAMI also routinely and effectively clocked out aggrieved employees for a full 30 minutes even when meal breaks were late, short, and/or interrupted. Mr. Valenzuela and/or other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods but were not relieved of all duties.

In addition, UMAMI has a company-wide policy and/or practice of refusing to pay for time spent working off-the-clock before/after the end of an employee's scheduled shift and during meal breaks, even though Mr. Valenzuela and other aggrieved employees still performed additional duties and were subject to UMAMI's control during those times. For example, Mr. Valenzuela was frequently required to clock out at his scheduled shift end time and continue working because UMAMI was short-staffed. At times, Mr. Valenzuela had to continue to work for up to an hour off-the-clock after his shift ended.

UMAMI knew or should have known that as a result of its policies, that Mr. Valenzuela and other aggrieved employees were performing some of their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. UMAMI also knew, or should have known, that it did not compensate Mr. Valenzuela and other aggrieved employees for this off-the-clock work. Because Mr. Valenzuela and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Valenzuela and other aggrieved employees were not paid overtime wages for all of the overtime hours they worked. UMAMI's failure to pay Mr. Valenzuela 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.

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

Mr. Valenzuela and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, and/or 2699(f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 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, § 11070(2)(K) (defining “Hours Worked”).

As described above, due to UMAMI’s scheduling practices, staffing practices, and resultant lack of break coverage, Mr. Valenzuela and other aggrieved employees were forced to forego meal breaks and/or have their meal breaks interrupted or delayed by work. Moreover, Mr. Valenzuela and other aggrieved employees were not relieved of all duties such that they could take second 30-minute meal periods on days that they worked in excess of 10 hours in a day. Mr. Valenzuela and other aggrieved employees were not provided with a second 30-minute meal period on days they worked over 10 hours while employed with UMAMI.

During the relevant time period, UMAMI also maintained and implemented a company-wide policy of requiring all newly hired employees and/or prospective employees to undergo mandatory drug testing and physical examination as a condition of employment. At all times, upon information and belief, UMAMI was in control of scheduling the date and time for the drug testing, selecting the provider/facility where the drug testing was to take place, and determining the scope of the physical examination and drug test. UMAMI gave other aggrieved employees strict instructions to obtain a drug test as a condition of their employment and other aggrieved employees underwent drug testing for the sole benefit of UMAMI. However, UMAMI did not compensate other aggrieved employees for the time they spent traveling to and from drug testing clinics or for the time they spent undergoing drug testing.

UMAMI did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, UMAMI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, UMAMI regularly failed to pay at least minimum wages to Mr. Valenzuela and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Valenzuela and other aggrieved employees are therefore entitled to penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), and 1198

California Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order require employers to provide meal and rest breaks and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours,

the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

As stated, UMAMI had a company-wide policy and/or practice of failing to schedule Mr. Valenzuela and other aggrieved employees for meal periods. Additionally, UMAMI regularly required Mr. Valenzuela and other aggrieved employees to clock out for a full 30 minute meal break within the first five (5) hours of work, even when meal breaks were late, short, and/or interrupted. UMAMI has understaffed and continues to understaff its restaurant locations, which has resulted in and continues to result in a lack of break coverage. At all times herein mentioned, UMAMI knew or should have known that as a result of its staffing policies, Mr. Valenzuela and other aggrieved employees have been required to perform some of their assigned duties during meal periods and that UMAMI did not pay meal period premium wages when meal periods were interrupted. During the relevant time period, Mr. Valenzuela has been required to handle cash, count the money in the register, run food to tables, and take orders from and assist customers while clocked out for a meal period due to understaffing. As a result, Mr. Valenzuela and other aggrieved employees had to work through some or all of their meal periods, have their meal periods interrupted to return to work, and/or wait extended periods of time before taking meal periods.

For example, Mr. Valenzuela was regularly required to clock out for his meal break after five (5) hours of work, but continue working until he was permitted to take her break, if he was permitted to take a meal break at all. He sometimes worked five (5) or more hours before being allowed to take a meal break. When this occurred, UMAMI did not take steps to ensure that Mr. Valenzuela was compensated for this off-the-clock work and did not provide Mr. Valenzuela with premium pay for the non-compliant meal period. Furthermore, UMAMI did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Valenzuela and other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent Mr. Valenzuela and/or other aggrieved employees signed second meal period waivers for shifts longer than 12 hours in length, such meal period waivers were invalid under California law.

As with meal periods, UMAMI's company-wide policies and resultant lack of break coverage prevented Mr. Valenzuela and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Mr. Garcia and other aggrieved employees were forced to forego and work through rest breaks, which were not scheduled, in order to perform duties such as handling cash and counting the money in the register, running food to tables, and taking orders from and assisting customers.

UMAMI also engaged in a systematic, company-wide policy of not paying meal and rest period premiums owed when compliant meal and rest periods were not provided. Because of this practice and/or policy, Mr. Valenzuela and other aggrieved employees did not receive premium pay for missed meal and/or rest periods. To the extent that UMAMI did pay Mr. Valenzuela and/or other

aggrieved employees premium pay for missed meal and/or rest periods, UMAMI did not pay Mr. Valenzuela and/or other aggrieved employees at the correct rate of pay for premium wages. Specifically, UMAMI systematically failed to properly calculate other aggrieved employees' regular rates of pay for purposes of paying premium wages by failing to include all forms of compensation, such as incentive pay, in the regular rate of pay. As a result, to the extent UMAMI paid other aggrieved employees premium pay for missed meal or rest periods, it did so at a lower rate than required by law. Accordingly, UMAMI failed to provide all meal and rest periods in violation of California Labor Code sections 226.7, 512, 1198, and failed to provide the statutory relief provided for by section 226.7 and the applicable IWC Wage Order.

Mr. Valenzuela and other aggrieved employees are entitled to penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. UMAMI has not provided Mr. Valenzuela and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violations occurs and \$100 per employee for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

UMAMI has knowingly and intentionally provided Mr. Valenzuela and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. Specifically, UMAMI violated sections 226(a)(8) and 226(a)(9). UMAMI failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for premium wages, including for double time, in violation of section 226(a)(9). UMAMI listed a double time rate ("Double Time") of \$11.41 per hour on Mr. Valenzuela's paystub, when his correct rate of pay was actually higher. *See example of violating paystub below.*

ALEJANDRO VALENZUELA ARREOLA

Taxable Marital Status: Single
 Exemptions/Allowances: 0
 Federal: 0
 CA: 0

	rate	hours	this period	year to date
Earnings	11.4100	79.21	903.79	6,466.11
Regular	17.1150	15.03	257.24	734.58
Overtime	11.4100	.50	11.41	11.41
Double Time			11.41	
Break Penalty			130.25	2,125.25
Totals			1,314.10	11,468.92
Net Pay			1,314.10	

Important Notes
 ATTENTION ALL TIPPED EMPLOYEES. PLEASE REMEMBER
 THAT YOU MUST DECLARE 100% OF ALL TIPS EARNED

Location / Earnings Type	Rate	Hours	Earnings
ATTOSERVER			11.41
Break Penalty			11.41
ATTOSERVER	11.4100	.50	11.41
Double Time			
ATTOSERVER	17.1150	15.03	257.24
Overtime			

Additionally, according to Mr. Valenzuela's paystubs, UMAMI's legal name is "URGP LLC," but, according to the California Secretary of State's website, the correct legal name is "URGP, LLC" in violation of Labor Code section 226(a)(8). *See example of violating paystub below.*



Earnings Statement

Period Beginning: 12/22/2015
Period Ending: 01/03/2016
Pay Date: 12/30/2015

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 00
State: 00

ALEJANDRO VALENZUELA ARREOLA

The wage statement deficiencies also include, among other things, failing to list gross wages earned; failing to list total hours worked by employees; failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list net wages earned; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, UMAMI failed to provide other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them in violation of 226(a).

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage 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 IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, UMAMI failed, on a company-wide basis, to keep records of meal period start and stop times for Mr. Valenzuela and other aggrieved employees in violation of section 1198.

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

Mr. Valenzuela and/or other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(e), 226.3, 1174.5, and/or 2699(a),(f)-(g).

Violation of California Labor Code § 204

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

During the relevant time period, UMAMI failed to pay Mr. Valenzuela and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

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

Violation of California Labor Code §§ 201, 202, and 203

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. UMAMI willfully failed to pay Mr. Valenzuela and other aggrieved employees who are no longer employed by UMAMI all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving UMAMI's employ in violation of Labor Code sections 201, 202, and 203.

Mr. Valenzuela and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 2802

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 15-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, UMAMI, on a company-wide basis, required that Mr. Valenzuela and other aggrieved employees utilize their own personal cell phones and cell phone data to carry out their job duties, but UMAMI failed to reimburse them for the costs of their cell phone plans and/or data plans. For example, Mr. Valenzuela was required to use his personal cellular phone in order to carry out his work, such as communicating with other store locations, when his store's phone was in use due to a customer calling in an order or when he was on the road driving to other stores and needed information. Although UMAMI required Mr. Valenzuela to regularly utilize his personal cellular phone to carry out work-related responsibilities, UMAMI failed to reimburse him for this cost.

Additionally, Mr. Valenzuela and other aggrieved employees were required by UMAMI to utilize their own personal vehicles to carry out company business, but UMAMI failed to reimburse them for all costs of travel, including mileage. For example, Mr. Valenzuela was required to drive to and from other stores an average of 55 miles per week, in order to pick up restaurant supplies such as cheese, hamburger buns, meat, produce, and beverages, using his own vehicle. Although UMAMI required that Mr. Valenzuela use his own vehicle and complete this task as part of his job duties, UMAMI never reimbursed him for all of his travel expenses and did not have a policy to reimburse him for mileage or travel expenses. UMAMI could have provided Mr. Valenzuela and other aggrieved employees with company vehicles to be used for fulfilling work-related tasks or reimbursed him for his travel and mileage. Instead, UMAMI passed this operating cost off on to Mr. Valenzuela and other aggrieved employees. Further, as mentioned, UMAMI had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory pre-employment drug testing and physical examinations, but did not reimburse them for their travel expenses. Thus, UMAMI had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

UMAMI's policy and/or practice of passing its operating costs on to Mr. Valenzuela and other aggrieved employees by requiring that they use their personal cellular phones and vehicles for business is in violation of California Labor Code section 2802. Mr. Valenzuela and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 222.5

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs a prospective employee incurs for obtaining any pre-employment medical or physical examination taken as a condition of employment.

During the relevant time period, UMAMI required that other aggrieved employees undergo a mandatory drug test as a condition of employment, but required them to do so at their own expense. As stated, upon information and belief, UMAMI had a company-wide policy requiring that all pre-hires, including other aggrieved employees travel to a medical clinic on their own time and using their own personal vehicles to undergo drug testing and/or physical examinations. At all times, upon information and belief, UMAMI was in control of scheduling the date and time for the drug testing, selecting the provider/facility where the drug testing was to take place, and determining the scope of the physical examination and drug test.

However, UMAMI did not compensate other aggrieved employees for the time they spent traveling to and from drug testing, for the time they spent undergoing drug testing or for the travel expenses they incurred getting to and from the medical clinic. UMAMI's policy and/or not paying for all costs other aggrieved employees incurred obtaining mandatory pre-employment physical examinations is in violation of California Labor Code section 222.5. Other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 246(h)

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(h) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

UMAMI failed to provide other aggrieved employees written notice on wage statements and/or other separate written statements that listed the requisite information set forth in Labor Code section 246(h). Other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C)

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid

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

UMAMI failed to provide Mr. Valenzuela and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C), including **a statement that the employee may accrue and use sick leave**. UMAMI's failure to provide Mr. Valenzuela and other aggrieved employees with written notice of basic information regarding their employment with UMAMI is in violation of Labor Code section 2810.5. Mr. Valenzuela and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid 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." 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." UMAMI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Valenzuela and other aggrieved employees' rights by violating various sections of the California Labor Code and provisions regulating hours and days of work of the applicable IWC Wage Order.

Accordingly, Mr. Valenzuela seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Garcia, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against UMAMI, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 246(h), 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1; 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Valenzuela seeks all applicable penalties 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 or address below:

Mao Shiokura
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: URGP, LLC (via Certified Mail)

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