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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 18 2022

BY JACQUELINE HARNESS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

KARINA FLANAGAN, individually, and on behalf of other members of the general public similarly situated, and as an aggrieved employee pursuant to the Private Attorney General Act ("PAGA"),

Plaintiff,

vs.

SBARRO LLC, a New York limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2215967

FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, *ET SEQ.*

(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
(2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
(3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
(4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
(5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
(6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
(7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
(8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to

BY FAX

Provide Reporting Time Pay);
(9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
(10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA §§ 2698, *et seq.*;
(11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
(12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

Plaintiff Karina Flanagan, individually and on behalf of all other members of the public similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees, alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure section 382 and California Labor Code sections 2698, *et seq*. ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California as non-exempt, hourly paid employees and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiff's share of damages, penalties, and other relief sought in this action does not exceed $75,000.

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

3. Venue is proper in this Court, because Defendants employ persons within the County of San Bernardino, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least two locations within the County of San Bernardino, including Defendants' restaurant in Ontario (1 Mills Circle,

Ontario, California 91764) and San Bernardino (318 Inland Center, San Bernardino, California 92408). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper.

THE PARTIES

4. Plaintiff Karina Flanagan is a resident of Hawthorne, California. Defendants employed Plaintiff as an hourly paid, non-exempt Cashier and Server from approximately March 2021 to June 2021 and from August 2021 to January 2022. Plaintiff worked for Defendants at their Sbarro restaurant location in Torrance, California. During her employment, Plaintiff typically worked six (6) to seven (7) hours or more per day, and five (5) days per week. Plaintiff's primary job duties included, without limitation, cashiering, preparing customers' orders, re-stocking inventory, and cleaning.

5. SBARRO LLC was and is, upon information and belief, a New York limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

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

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of SBARRO LLC at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, SBARRO LLC and/or DOES 1 through 10 (collectively, "Defendants" or "SBARRO"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the

other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

GENERAL ALLEGATIONS

11. Defendants are a leading quick-service restaurant chain specializing in New York-style pizza sold by the slice and other Italian American cuisine. Defendants own and operate approximately 26 "Sbarro" restaurant locations throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Columbus, Ohio, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Columbus, Ohio, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and

jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

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

16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and class members were not paid at least minimum wages for work done off-the-clock.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to meal periods in accordance with the California Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they

did not receive a timely, uninterrupted, thirty (30) minute meal period.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and class members were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and class members with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and class members were not provided complete and accurate wage statements.

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

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay within permissible time periods.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and class

members did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay within permissible time periods.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all reporting time pay when Plaintiff and class members were required to report to work but were put to work for less than half of their usual or scheduled shift. In violation of the California Labor Code and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time pay.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

27. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

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

29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

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

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

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

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

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

33. On August 10, 2022, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-900901-22. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

34. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

35. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

37. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

38. 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.

39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of

Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

42. Plaintiff's proposed class consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint[1] until the date of trial ("Class").

43. Plaintiff's proposed subclass consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

44. Members of the Class and Subclass are referred to herein as "class members."

45. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

46. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;

(b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;

(c) Whether Defendants failed to provide Plaintiff and class members meal periods;

(d) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;

[1] Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

(e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;

(h) Whether Defendants failed to timely pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay to Plaintiff and class members during their employment;

(i) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;

(j) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

(k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the

entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect

retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

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

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

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

51. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

52. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members 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 shift differential pay, nondiscretionary bonuses and incentive pay.

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

54. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members 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.

55. First, Defendants had, and continue to have, a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-clock before and/or after their shifts. For example, because Defendants' timekeeping system was integrated with the company's point-of-sale ("POS") system, Plaintiff and class members would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Plaintiff was required to wait several minutes under Defendants' control until a POS machine was available for clocking-in, time for which she was not paid.

56. Second, Defendants had, and continue to have, a company-wide policy and/or practice of strictly staffing their restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, on information and belief, Defendants limited the allocation of labor hours based on certain sales metrics, but this allotment was insufficient to staff the restaurants during their hours of operation, meet customer demand, and provide adequate meal period coverage. Defendants' uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage,

because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, Defendants had a practice of failing to schedule meal periods, which further caused Plaintiff and class members to not be relieved of their duties for compliant meal periods. Consequently, Plaintiff and class members were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

57. Third, upon information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that Defendants would otherwise owe. In conjunction with this policy, Defendants also pressured Plaintiff and class members who had signed invalid meal period waivers to clock out before they had worked six (6) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. For example, Defendants required Plaintiff to clock out at the end of her scheduled shift and continue working, performing duties such as cleaning or taking customers' orders, tasks she was required to complete before she could leave for the day. Thus, Plaintiff and class members were required to perform their assigned tasks off-the-clock because Defendants wanted to avoid paying penalties for missed meal periods.

58. In addition, Defendants' company-wide timekeeping system prevented Plaintiff and class members from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and class members once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and class members from recording all hours worked when their meal periods were shortened or interrupted.

59. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members sometimes 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, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

60. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages

(Against all Defendants)

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

62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. Tit. 8, § 11050(2)(K) (defining "Hours Worked").

63. First, as stated above, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-

clock before and/or after their shifts, including waiting to clock in for the start of their shifts because other employees were using the POS system. Thus, Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

64. Second, as set forth above, due to Defendants' uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated above, on information and belief, in order to limit the meal penalties that Defendants would otherwise owe, Defendants' management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods. In conjunction with this policy, Defendants also pressured Plaintiff and class members to clock out before they worked six (6) hours in day to limit their eligibility for meal periods, but required them to continue working, time for which they were not paid. Moreover, as stated, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and class members for 30 minutes when they clocked out for a meal period.

65. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

66. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations

(Against all Defendants)

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

68. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

71. During the relevant time period, as set forth above, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and class members had to work

through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Plaintiff was required to work through her meal periods or could not take her meal periods until the sixth hour of her shift, due to the heavy workload and lack of coverage.

72. Moreover, as stated, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured Plaintiff and class members to clock out for meal periods and/or would adjust Plaintiff's and class members' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by Defendants. For example, Plaintiff was sometimes required to record that she had received compliant meal periods on shifts when she had not, in fact, received timely meal periods. In conjunction with this policy, as stated, on information and belief, Defendants' management also pressured Plaintiff and class members who had signed invalid meal period waivers to clock out before they had worked six (6) hours in day and continue working to limit their eligibility for meal periods, in order to strictly limit the meal penalties that would need to be paid by Defendants.

73. Also, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and class members from recording when their meal periods were shortened or interrupted, because the system locked out Plaintiff and class members once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Plaintiff's meal periods were sometimes interrupted or cut short because she was required to walk to the restaurant's storage facility during her meal period to obtain inventory and supplies in order for the restaurant to keep up with customer demand. Plaintiff and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

74. At all times herein mentioned, Defendants knew or should have known that, as a result of these policies, Plaintiff and class members were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods.

Defendants further knew or should have known that Defendants did not pay Plaintiff and class members all meal period premiums when meal periods were late, missed, shortened, or interrupted.

75. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Plaintiff and class members have not received all premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

76. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations

(Against all Defendants)

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

78. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

79. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

80. At all relevant times, 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. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

81. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Plaintiff and class members from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods.

82. Furthermore, upon information and belief, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and class members remain on the work premises during their rest periods. Because Plaintiff and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

83. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without

receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Plaintiff had to forego her rest periods because the restaurant was busy and did not have coverage. When Plaintiff was able to take her rest periods, they were often interrupted because she was required to walk to the restaurant storage area to obtain inventory and supplies for the restaurant to keep up with customer demand.

84. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because Defendants frowned upon employees accruing rest period penalties, Defendants pressured Plaintiff and class members to falsify the time rest periods were taken and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Plaintiff and class members had received a compliant rest period at that time or not, in order to strictly limit rest period penalties that Defendants would otherwise owe. As a result of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods.

85. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

(Against all Defendants)

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

87. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and

address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

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

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

90. The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

91. 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. . . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members 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.

92. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

93. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

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SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination

(Against all Defendants)

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

95. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

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

97. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

98. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment

(Against all Defendants)

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

100. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and class members during their employment.

101. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

102. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

103. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay within the time periods specified by California Labor Code section 204.

104. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay

(Against all Defendants)

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

106. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

107. The applicable IWC wage order, California Code of Regulations, Title 8, section 11050(5)(A), provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

108. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay Plaintiff and class members reporting time pay when they reported to

work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

109. Defendants had a company-wide practice of sending Plaintiff and class members home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Plaintiff and class members for half of their scheduled shift. For example, Defendants' managers sent Plaintiff home within two (2) hours from the start of her shift because business was slow, but Plaintiff was only paid for the time she had worked. Although Plaintiff and class members reported to work based on the schedule that was provided to them, Defendants would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, Defendants did not pay Plaintiff and class members for at least half of their scheduled day's work or the minimum reporting time pay.

110. Accordingly, Plaintiff and class members were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11150(5)(A).

NINTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

(Against all Defendants)

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

112. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the employer requires the use of tools or equipment or they 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 may provide and maintain hand tools and equipment customarily required by the particular trade or craft." IWC Wage Order No. 5-2001 also provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

113. During the relevant time period, Defendants required Plaintiff and class members to wear uniforms bearing the "Sbarro" company logo, including a T-shirt and hat. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with one T-shirt and one hat at the time of hire. Because Defendants failed to provide Plaintiff and class members with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and class members had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Plaintiff's uniform shirt would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix these clothes in with other laundry. As a result, she had to wash her uniform shirt separately from her regular clothing, and would spend about $15 per week at the laundromat for the upkeep of her uniform. Thus, Defendants failed to maintain uniforms they required Plaintiff and class members to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

114. Also, Defendants, on a company-wide basis, required Plaintiff and class members to obtain and pay for certain certifications, such as a food handler's certificate, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Plaintiff complied with this requirement and spent approximately $10 to obtain a food handler's certificate, but Defendants did not reimburse her for the costs of obtaining the certification. Thus, Defendants failed to reimburse Plaintiff and class members for the costs of obtaining these certifications, including training and/or examination fees. At all relevant times, Plaintiff did not earn at least two (2)

times the minimum wage.

115. Defendants could have provided Plaintiff and class members with the actual equipment for use on the job, such as an adequate number of uniform items or access to laundering services; or Defendants could have reimbursed employees for the costs of their certification fees and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class members.

116. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

117. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

TENTH CAUSE OF ACTION

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

(Against all Defendants)

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

119. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover 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, 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 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other

aggrieved employees with all required overtime pay, as alleged herein;

(b) Violation of Labor Code sections 1182.12. 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;

(d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

(g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

(i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other aggrieved employees were put to work for less than half of their usual or scheduled shifts, as alleged herein; and

(j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily

incurred, as alleged herein.

121. Therefore, Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* – Unlawful Business Practices

(Against all Defendants)

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

123. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

124. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

125. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq*.

126. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

(a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;

(b) Failing to pay at least minimum wage to Plaintiff and class members in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;

(c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein; and

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

127. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

128. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq*. – Unfair Business Practices

(Against all Defendants)

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

130. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

131. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

132. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections

17200, *et seq.* (*Id.*)

133. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

134. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (l) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC

Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members

overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiff and class members with reporting time pay;

49. For all actual, consequential and incidental losses and damages, according to proof;

50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and

51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

53. For unpaid business-related expenses and such general and special damages as may be appropriate;

54. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

55. For all actual, consequential, and incidental losses and damages, according to proof;

56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

59. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to pay Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

64. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

65. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

67. For such other and further relief as the Court may deem equitable and appropriate.

As to the Twelfth Cause of Action

68. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

69. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

70. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

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

73. For such other and further relief as the Court may deem equitable and appropriate.

Dated: October 18, 2022

Respectfully submitted,

Capstone Law APC

By:

Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Karina Flanagan

EXHIBIT “1”

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August 10, 2022

VIA ONLINE SUBMISSION

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

Subject: *Karina Flanagan v. Sbarro LLC*

Dear PAGA Administrator:

This office represents Karina Flanagan in connection with her claims under the California Labor Code. Ms. Flanagan was an employee of SBARRO LLC ("SBARRO").

The employer may be contacted directly at the address below:

SBARRO LLC
1328 DUBLIN ROAD
COLUMBUS, OH 43215

Ms. Flanagan intends to seek civil penalties, attorney's 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"). Ms. Flanagan seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SBARRO as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SBARRO employed Ms. Flanagan as an hourly paid, non-exempt Cashier and Server from approximately March 2021 to June 2021 and from August 2021 to January 2022. Ms. Flanagan worked for SBARRO at its Sbarro restaurant location in Torrance, California. During her employment, Ms. Flanagan worked six (6) to seven (7) hours or more per day, and five (5) days per week. Ms. Flanagan's primary job duties included, without limitation, cashiering, preparing customers' orders, re-stocking inventory, and cleaning.

SBARRO committed one or more of the following Labor Code violations against Ms. Flanagan, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):[1]

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

SBARRO LLC is New York limited liability company and a leading quick-service restaurant chain specializing in New York-style pizza sold by the slice and other Italian American cuisine. SBARRO owns and operates approximately 26 "Sbarro" restaurant locations throughout California. Upon information and belief, SBARRO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Columbus, Ohio, for all non-exempt, hourly paid employees working for SBARRO in California, including Ms. Flanagan and other aggrieved employees. At all relevant times, SBARRO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Flanagan and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in 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.

SBARRO willfully failed to pay all overtime wages owed to Ms. Flanagan and other aggrieved employees. During the relevant time period, Ms. Flanagan 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

[1] These facts, theories, and claims are based on Ms. Flanagan's experience and counsel's review of those records currently available relating to Ms. Flanagan's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Flanagan reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, SBARRO had, and continues to have, a company-wide policy and/or practice requiring Ms. Flanagan and other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts. For example, because SBARRO's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Flanagan and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Ms. Flanagan was required to wait several minutes under SBARRO's control until a POS machine was available for clocking-in, time for which she was not paid.

Second, SBARRO had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, on information and belief, SBARRO limited the allocation of labor hours based on certain sales metrics, but this allotment was insufficient to staff the restaurants during their hours of operation, meet customer demand, and provide adequate meal period coverage. SBARRO's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Ms. Flanagan and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, SBARRO had a practice of failing to schedule meal periods, which further caused Ms. Flanagan and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. Flanagan and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Third, upon information and belief, because SBARRO frowned upon employees accruing meal period penalties, SBARRO pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that SBARRO would otherwise owe. In conjunction with this policy, SBARRO also pressured Ms. Flanagan and other aggrieved employees who had signed invalid meal period waivers to clock out before they had worked six (6) hours in a day, in order to limit their eligibility for meal periods they otherwise would have received. For example, approximately once per month, SBARRO required Ms. Flanagan to clock out at the end of her scheduled shift and continue working for about 10 minutes, performing duties such as cleaning or taking customers' orders, tasks she was required to complete before she could leave for the day. Thus, Ms. Flanagan and other aggrieved employees were required to perform their assigned tasks off-the-clock because SBARRO wanted to avoid paying penalties for missed meal periods.

In addition, SBARRO's company-wide timekeeping system prevented Ms. Flanagan and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Flanagan and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, SBARRO's timekeeping system further prevented Ms. Flanagan and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

SBARRO knew or should have known that as a result of these company-wide practices and/or policies, Ms. Flanagan and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Flanagan and other aggrieved employees sometimes 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, Ms. Flanagan and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SBARRO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, SBARRO paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SBARRO failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SBARRO failed to pay all overtime wages by paying a lower overtime rate than required.

SBARRO's failure to pay Ms. Flanagan 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. Ms. Flanagan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. Tit. 8, § 11050(2)(K) (defining "Hours Worked").

First, as stated above, SBARRO had a company-wide policy and/or practice requiring Ms. Flanagan and other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts, including waiting to clock in for the start of their shifts because other employees were using the POS system. Thus, SBARRO failed to track this time Ms. Flanagan and other aggrieved employees spent working off-the-clock, and Ms. Flanagan and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to SBARRO's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule or provide meal periods, and subsequent lack of meal period coverage, Ms. Flanagan and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, as stated above, on information and belief, in order to limit the meal penalties that SBARRO would otherwise owe, SBARRO's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant

meal periods. In conjunction with this policy, SBARRO also pressured Ms. Flanagan and other aggrieved employees to clock out before they worked six (6) hours in day to limit their eligibility for meal periods, but required them to continue working, time for which they were not paid. Moreover, as stated, SBARRO systematically failed to pay Ms. Flanagan and other aggrieved employees for actual hours worked during unpaid meal periods, because SBARRO's timekeeping system locked out Ms. Flanagan and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, SBARRO did not pay at least minimum wages for all hours worked by Ms. Flanagan and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SBARRO did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SBARRO regularly failed to pay at least minimum wages to Ms. Flanagan 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. Ms. Flanagan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

During the relevant time period, as set forth above, SBARRO had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Flanagan and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Flanagan and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, about once per month, Ms. Flanagan was required to work

through her meal periods or could not take her meal periods until the sixth hour of her shift, due to the heavy workload and lack of coverage.

Moreover, as stated, on information and belief, because SBARRO frowned upon employees accruing meal period penalties, SBARRO's management pressured Ms. Flanagan and other aggrieved employees to clock out for meal periods and/or would adjust Ms. Flanagan's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by SBARRO. For example, Ms. Flanagan was sometimes required to record that she had received compliant meal periods on shifts when she had not, in fact, received timely meal periods. In conjunction with this policy, as stated, on information and belief, SBARRO's management also pressured Ms. Flanagan and other aggrieved employees who had signed invalid meal period waivers to clock out before they had worked six (6) hours in day and continue working to limit their eligibility for meal periods, in order to strictly limit the meal penalties that would need to be paid by SBARRO.

Also, as stated, SBARRO's company-wide timekeeping system prevented Ms. Flanagan and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. Flanagan and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Ms. Flanagan's meal periods were interrupted or cut short at least twice per week because she was required to walk to the restaurant's storage facility during her meal period to obtain inventory and supplies in order for the restaurant to keep up with customer demand.

Moreover, SBARRO 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. Ms. Flanagan and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

SBARRO knew or should have known that as a result of its policies and practices, Ms. Flanagan and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SBARRO further knew or should have known that it did not pay Ms. Flanagan and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, SBARRO engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Flanagan and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SBARRO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SBARRO did not pay other aggrieved employees at the correct rate of pay for premiums because SBARRO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SBARRO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Flanagan and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc*., 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SBARRO regularly failed to authorize and permit Ms. Flanagan and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SBARRO's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. Flanagan and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. SBARRO also failed to schedule rest periods, which, coupled with SBARRO's failure to provide adequate rest period coverage, further led to Ms. Flanagan and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, SBARRO maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Flanagan and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Flanagan and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, SBARRO effectively maintained control over Ms. Flanagan and other aggrieved employees during rest periods.

As a result of SBARRO's practices and policies, Ms. Flanagan and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Flanagan had to forego her rest periods approximately three (3) times per week because the restaurant was busy and did not have coverage. When Ms. Flanagan was able to take her rest periods, they were often interrupted because she was required to walk to the restaurant storage area to obtain inventory and supplies for the restaurant to keep up with customer demand.

SBARRO has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because SBARRO frowned upon employees accruing rest period penalties, SBARRO pressured Ms. Flanagan and other

aggrieved employees to falsify the time rest periods were taken and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Ms. Flanagan and other aggrieved employees had received a compliant rest period at that time or not, in order to strictly limit rest period penalties that SBARRO would otherwise owe. As a result of this practice and/or policy, Ms. Flanagan and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SBARRO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SBARRO did not pay other aggrieved employees at the correct rate of pay for premiums because SBARRO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SBARRO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Flanagan and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SBARRO has not provided Ms. Flanagan and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SBARRO has knowingly and intentionally provided Ms. Flanagan and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SBARRO issued uniform wage statements to Ms. Flanagan and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, SBARRO violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SBARRO did not record the time Ms. Flanagan and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SBARRO did not list the correct amount of gross wages and net wages earned by Ms. Flanagan and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SBARRO failed to accurately list the total number of hours worked by Ms. Flanagan and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because SBARRO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, SBARRO did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). SBARRO also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SBARRO engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Flanagan and other aggrieved employees, in violation of section 1198. Furthermore, in light of SBARRO's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SBARRO kept no records of meal start and end times for second meal periods.

Because SBARRO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Flanagan 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, Ms. Flanagan 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.

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

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

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

During the relevant time period, SBARRO failed to pay Ms. Flanagan and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

SBARRO willfully failed to pay Ms. Flanagan and other aggrieved employees who are no longer employed by SBARRO all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving SBARRO's employ.

Ms. Flanagan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall

be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, SBARRO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because SBARRO failed to pay Ms. Flanagan and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

SBARRO had a company-wide practice of sending Ms. Flanagan and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Flanagan and other aggrieved employees for half of their scheduled shift. For example, on at least two occasions, SBARRO's managers sent Ms. Flanagan home within two (2) hours from the start of her shift because business was slow, but Ms. Flanagan was only paid for the time she had worked. Although Ms. Flanagan and other aggrieved employees reported to work based on the schedule that was provided to them, SBARRO would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, SBARRO did not pay Ms. Flanagan and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Ms. Flanagan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc*., 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer." IWC Wage Order No. 5-2001 also provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, SBARRO required Ms. Flanagan and other aggrieved employees to wear uniforms bearing the "Sbarro" company logo, including a T-shirt and hat. However, SBARRO did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, SBARRO only provided Ms. Flanagan with one T-shirt and one

hat at the time of hire. Because SBARRO failed to provide Ms. Flanagan and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Flanagan and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Flanagan's uniform shirt would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix these clothes in with other laundry. As a result, she had to wash her uniform shirt separately from her regular clothing, and would spend about $15 per week at the laundromat for the upkeep of her uniform. Thus, SBARRO failed to maintain uniforms they required Ms. Flanagan and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Second, SBARRO, on a company-wide basis, required Ms. Flanagan and other aggrieved employees to obtain and pay for certain certifications, such as a food handler's certificate, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Ms. Flanagan complied with this requirement and spent approximately $10 to obtain a food handler's certificate, but SBARRO did not reimburse her for the costs of obtaining the certification. Thus, SBARRO failed to reimburse Ms. Flanagan and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Third, during the relevant time period, SBARRO, on a company-wide basis, required that other aggrieved employees use their own personal vehicles to run company errands. For example, other aggrieved employees were required to use their personal vehicles and run company errands during their shifts, such as dropping off or picking up cash at a local bank. Although SBARRO required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SBARRO failed to reimburse them for their mileage or travel expenses.

SBARRO could have provided Ms. Flanagan and other aggrieved employees with the actual equipment for use on the job, such as company vehicles and an adequate number of uniform items or access to laundering services; or SBARRO could have reimbursed employees for the costs of their certification fees, mileage, travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, SBARRO passed these operating costs off onto Ms. Flanagan and other aggrieved employees. At all relevant times, Ms. Flanagan did not earn at least two (2) times the minimum wage.

Thus, SBARRO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Flanagan and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties

provided for in this section are in addition to any other civil or criminal penalty provided by law." SBARRO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Flanagan's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Flanagan seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Flanagan, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against SBARRO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Flanagan seeks all applicable civil 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:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Anthony Castillo

Copy: SBARRO LLC (via U.S. Certified Mail)

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