

1 MICHAEL R. CROSNER (SBN 41299)
2 ZACHARY M. CROSNER (SBN 272295)
3 zach@crosnerlegal.com
4 JAMIE SERB (SBN 289601)
5 jamie@crosnerlegal.com
6 JONATHAN STILZ (SBN 308681)
7 jon@crosnerlegal.com
8 **CROSNER LEGAL, PC**
9 9440 Santa Monica Blvd. Suite 301
10 Beverly Hills, CA 90210
11 Tel: (310) 496-5818
12 Fax: (310) 510-6429

13 Attorneys for Plaintiff ANTOINETTE BROWN, as an individual,
14 and on behalf of all others similarly situated and aggrieved

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 ANTOINETTE BROWN, as an individual
18 and on behalf of all others similarly
19 situated,

20 Plaintiff,

21 v.

22 ELA FOODS, INC., a California
23 corporation; POP FOODS SERVICES,
24 INC., a California corporation; and DOES
25 1-100, inclusive,

26 Defendants.

Case No.: 22STCV26088

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Recovery of Unpaid Minimum Wages and Liquidated Damages**
2. **Recovery of Unpaid Overtime Wages**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
4. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
5. **Failure to Furnish Accurate Itemized Wage Statements**
6. **Failure to Timely Pay All Wages Due Upon Separation of Employment**
7. **Failure to Reimburse Business Expenses**
8. **Unfair Competition**
9. **Violation of the Private Attorneys General Act of 2004**

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

10/17/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

1 Plaintiff, ANTOINETTE BROWN (“PLAINTIFF”), as an individual and on behalf of, the
2 State of California, all other similarly situated Class Members (defined below) and Aggrieved
3 Employees (defined below), hereby files this First Amended Complaint against Defendants ELA
4 FOODS, INC., a California corporation; POP FOODS SERVICES, INC., a California corporation;
5 and DOES 1-100, inclusive, (collectively referred to herein as "DEFENDANTS"). PLAINTIFF is
6 informed and believes, and on the basis of that information and belief, alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in the County of Los Angeles, California, pursuant to California Code of Civil Procedure
10 section 395.5 because DEFENDANTS employed PLAINTIFF to work in the County of Los
11 Angeles, and some of the acts, omissions, and conduct alleged by PLAINTIFF herein occurred in
12 this county. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069
13 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
14 violations against some of its employees).

15 **THE PARTIES**

16 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF
17 worked for DEFENDANTS in the State of California as a non-exempt employee during the relevant
18 period.

19 3. Defendant ELA FOODS, INC., is a California corporation that, at all relevant times,
20 was authorized to do business within the State of California and is doing business in the State of
21 California. Defendant POP FOODS SERVICES, INC. is a California corporation that, at all relevant
22 times, was authorized to do business within the State of California and is doing business in the State
23 of California. DEFENDANTS and their managing agents own, operate, or otherwise manage a fast-
24 food restaurant chain, doing business as Popeyes Louisiana Kitchen. DEFENDANTS assigned
25 PLAINTIFF to work at DEFENDANTS’ restaurant facility located at 39462 Trade Center Dr.
26 Palmdale, California.

27 4. The true names and capacities of the DOE Defendants sued herein as DOES 1
28 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such

1 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
2 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
3 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
4 become known.

5 5. PLAINTIFF is further informed and believes that, at all relevant times, each
6 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
8 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
9 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
10 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
11 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
12 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
13 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
14 controlled, aided and abetted the conduct of all other Defendants.

15 **JOINT LIABILITY**

16 6. Under California law, the definition of the term “to employ” is broadly construed
17 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
18 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
19 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
20 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
21 was to reach situations in which multiple entities control different aspects of the employment
22 relationship. Supervision of the work, in the specific sense of exercising control over how services
23 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
24 wage order. *Id.* at 76. A joint employer relationship exists when one entity hires and pays a worker,
25 and the other entity supervises the work. *Id.* Moreover, the California Court of Appeal recently
26 broadened the test for joint employment in California, applying a less stringent standard to what
27 constitutes sufficient control by a business over its vendor’s employees’ wages and working
28 conditions to render that business liable as a joint employer. See, *Medina v. Equilon Enterprises*,

1 LLC, 68 Cal. App. 5th 868 (2021); “[i]f the putative joint employer instead exercises enough control
2 over the intermediary entity to indirectly dictate the wages, hours, or working conditions of the
3 employee, that is a sufficient showing of joint employment,” Id. at 875 [emphasis added].

4 7. During PLAINTIFF’s employment with DEFENDANTS, PLAINTIFF and the Class
5 Members and Aggrieved Employees were jointly employed by these DEFENDANTS for purposes
6 of the Wage Orders, under the alternative definitions of “to employ” adopted by the California
7 Supreme Court in *Martinez, supra*. As discussed below, these DEFENDANTS (1) exercised control
8 over wages, hours and working conditions of PLAINTIFF and the Class Members and Aggrieved
9 Employees; (2) suffered or permitted PLAINTIFF and the Class Members and Aggrieved
10 Employees to work for them; and (3) engaged PLAINTIFF and the Class Members and Aggrieved
11 Employees to work for them.

12 8. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
13 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
14 human resources as a set forth herein. As a result, DEFENDANTS utilized the same unlawful wage
15 and hour policies and practices across all of their California locations/facilities and subjected all of
16 the Class Members and Aggrieved Employees to these same policies and practices regardless of the
17 location(s) or facilities where they worked in California.

18 9. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
19 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
20 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and cause of
21 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
22 Members’ and Aggrieved Employees’ wages, hours and working conditions, and/or suffered or
23 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
24 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.
25 Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
26 uniform set of policies, practices and/or procedures concerning, *inter alia*, hourly and overtime pay,
27 time-keeping practices, meal and rest periods, payment of wages, hours, background check inquiries
28 and practices, and working conditions that were distributed to, and/or applied to PLAINTIFF and

1 the Class Members and Aggrieved Employees, and further that DEFENDANTS uniformly
2 compensated and controlled the wages of PLAINTIFF and the Class Members and Aggrieved
3 Employees in a uniform manner. DEFENDANTS collectively represented to PLAINTIFF and the
4 Class Members and Aggrieved Employees that each was an "at-will" employee of DEFENDANTS,
5 and that DEFENDANTS collectively retained the right to terminate PLAINTIFF and the Class
6 Members' and Aggrieved Employees' employment with or without cause. Upon information and
7 belief, DEFENDANTS further collectively represented to PLAINTIFF and the Class Members and
8 Aggrieved Employees in writing the details of their compensation, and the manner in which they
9 were to take meal and rest periods, the procedures required by DEFENDANTS collectively for
10 recordation of hours worked and the policies applicable to PLAINTIFF and the Class Members and
11 Aggrieved Employees by which DEFENDANTS collectively would evaluate the wage rates of
12 PLAINTIFF and the Class Members and Aggrieved Employees.

13 10. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
14 and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees. As such,
15 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
16 the Class Members' and Aggrieved Employees' employment, including the instrumentality that
17 resulted in the illegal conduct for which PLAINTIFF seek relief in this Complaint.

18 **CLASS ALLEGATIONS**

19 11. PLAINTIFF brings this action on behalf of PLAINTIFF and all others similarly
20 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
21 seeks to represent are defined as follows based on the following subclasses and referred to
22 collectively as the "Class Members":

23 All current and former non-exempt employees that worked directly or via a staffing agency
24 for DEFENDANTS in California at any time within the four years and 178 days prior to the
25 filing of the initial Complaint"¹("Class Period").

26 i. Numerosity. While the exact number of Class Members is unknown to PLAINTIFF at

27 _____
28 ¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.

1 this time, the class is so numerous that the individual joinder of all members is
2 impractical under the circumstances of this case.

3 ii. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because
4 common questions of law and fact predominate over individual issues. Common
5 questions include, but are not limited to, the following: (1) whether DEFENDANTS
6 understated hours worked and failed to pay all amounts due to PLAINTIFF and the
7 Class Members for wages earned, including minimum wages and overtime wages under
8 California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class
9 Members with all meal periods or premium payments in lieu thereof, in compliance
10 with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class
11 Members with all rest periods or premium payments in lieu thereof, in compliance with
12 California law; (4) whether DEFENDANTS provided PLAINTIFF and the Class
13 Members with accurate, itemized wage statements in compliance with California law,
14 displaying, including but not limited to, the total hours worked during the pay period;
15 (5) whether DEFENDANTS timely paid the Class Members all wages due upon
16 separation of employment; (6) whether DEFENDANTS failed to reimburse
17 PLAINTIFF and the Class Members for all business expenses; and (7) whether
18 DEFENDANTS violated California Business and Professions Code sections 17200, et
19 seq.

20 iii. Ascertainable Class. The proposed class is ascertainable as its members can be
21 identified and located using information in DEFENDANTS' business, payroll and
22 personnel record.

23 iv. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
24 PLAINTIFF suffered a similar injury as the other Class Members as a result of
25 DEFENDANT's common practices regarding, *inter-alia*, failure to calculate and pay
26 all owed minimum and overtime wages, failure to provide proper meal and rest periods
27 or premium compensation in lieu thereof, failure to provide accurate wage statements,
28 failure to reimburse business expenses, and failure to timely pay all wages upon

1 separation of employment.

2 v. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the Class
3 Members. PLAINTIFF has no interests adverse to the interests of the other Class
4 Members. Counsel who represent PLAINTIFF are competent and experienced in
5 litigating similar class action cases and are California lawyers in good standing. Counsel
6 for PLAINTIFF have the experience and resources to vigorously prosecute this case.

7 vi. Superiority. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy since individual joinder of all members of the class is
9 impractical. Class action treatment will permit a large number of similarly situated
10 persons to prosecute their common claims in a single forum simultaneously, efficiently,
11 and without the unnecessary duplication of effort and expense that numerous individual
12 actions would engender. Furthermore, as the damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, while an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments. Finally, the alternative
19 of filing a claim with the California Labor Commissioner is not superior, given the lack
20 of discovery in such proceedings, the fact that there are fewer available remedies, and
21 the losing party has the right to a trial de novo in the Superior Court.

22 **FACTUAL AND LEGAL ALLEGATIONS**

23 12. During the Class Period, PLAINTIFF, and each of the Class Members, were
24 employed by DEFENDANTS in the State of California as non-exempt, employees. During the
25 PAGA Period (defined below), PLAINTIFF and the Aggrieved Employees were employed by
26 DEFENDANTS in the State of California as non-exempt, employees. At all times referenced herein,
27 DEFENDANTS exercised control over PLAINTIFF, and Class Members and Aggrieved Employees
28 and suffered and/or permitted them to work.

1 13. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
2 PLAINTIFF worked for DEFENDANTS as a manager, general manager, and/or similar title, from
3 in or around August 2021 through in or around mid-March 2022, when PLAINTIFF resigned from
4 PLAINTIFF's employment. DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS'
5 restaurant facility located at 39462 Trade Center Dr. in Palmdale, California.

6 14. PLAINTIFF typically worked at least seven and one half (7 1/2) hours per day, at
7 least (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
8 DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other Class
9 Members and Aggrieved Employees were also compensated with non-discretionary remuneration,
10 such as but not limited to, non-discretionary bonuses/incentive pay and/or other non-discretionary
11 compensation. For example, based on information and belief, DEFENDANTS compensated
12 PLAINTIFF with non-discretionary attendance bonuses and/or other non-discretionary
13 compensation.

14 15. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
15 PLAINTIFF and other Class Members and Aggrieved Employees for all hours worked by virtue of
16 DEFENDANTS' automatic deduction and time rounding policies, payment according to scheduled
17 hours worked instead of actual time worked, mandated pre-shift/post-shift/ and/or other off-the
18 clock work policies and/or practices and failure to relieve employees of all duties/employer control
19 during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

20 16. As explained below, PLAINTIFF and other Class Members and Aggrieved
21 Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and
22 second meal periods. Based on information and belief, despite failing to provide lawful meal
23 periods, DEFENDANTS implemented a policy and/or practice of automatically deducting at least
24 thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that
25 PLAINTIFF and other Class Members and Aggrieved Employees were working through part of all
26 of these meal periods, thereby depriving PLAINTIFF and other Class Members and Aggrieved
27 Employees of all earned minimum and overtime wages.

28 17. Based on further information and belief, DEFENDANTS rounded the start and end

1 times of employee meal periods and shift start and end times resulting in PLAINTIFF and other
2 Class Members and Aggrieved Employees not being paid for all time worked.

3 18. Based on information and belief, Class Members and Aggrieved Employees were
4 not paid for all hours worked due to DEFENDANTS' policy and/or practice of paying according to
5 scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies
6 and/or practices. For example, on days PLAINTIFF opened her work location, PLAINTIFF was
7 required to unlock the doors, turn on all the lights in the restaurant and deactivate the alarm before
8 clocking in for work. This resulted in at least several minutes of uncompensated pre-shift work time.
9 At the end of a shift, PLAINTIFF and/or the other Class Members and Aggrieved Employees in
10 charge of closing the location were required to first clock out for their shifts before enabling the
11 alarm, turning off all the lights in the facility and then locking the doors. This resulted in additional
12 off-the-clock post-shift work that was not compensated.

13 19. Based on information and belief, DEFENDANTS did not compensate Class
14 Members and Aggrieved Employees for time spent donning and doffing personal protective
15 equipment and/or uniforms (e.g., rubber gloves, goggles, hairnets, hats, and/or face masks) during
16 meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled
17 shift. For example, prior to clocking in to work, Class Members and Aggrieved Employees were
18 required to walk to the back room and/or office to bestow any personal items and/or don uniforms
19 and/or protective equipment before clocking in for their shifts.

20 20. Additionally, PLAINTIFF and other Class Members and Aggrieved Employees were
21 required to perform other off-the-clock work for which they were not compensated. For example,
22 DEFENDANTS' fingerprint scanning system/electronic employee time-keeping system regularly
23 malfunctioned such that Class Members and Aggrieved Employees were frequently required to
24 either reinitiate the system prior to being able to clock in and/or were unable to clock in at all for
25 the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock
26 work and the underpayment of minimum and overtime wages owed to Class Members and
27 Aggrieved Employees. Based on information and belief, Class Members and Aggrieved Employees
28 experienced the same issues when clocking out for shifts and/or back in for meal periods. This time

1 spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid
2 minimum wages.

3 21. Based on information and belief, DEFENDANTS failed to pay Class Members and
4 Aggrieved Employees for time they were required to spend completing orientation, policy
5 questionnaires, and/or time spent completing the onboarding process including but not limited to
6 reviewing various documents and policies provided by DEFENDANTS. Based on information and
7 belief, this work time was completed off-the-clock and was not compensated.

8 22. Based on information and belief, Class Members and Aggrieved Employees were
9 required to perform other work outside of their scheduled shift times that was not compensated. For
10 example, PLAINTIFF consistently received work-related calls and/or messages to her personal cell
11 phone/mobile device from other managers and/or supervisors before and/or after her scheduled shift
12 times, including but not limited to, on purported days off, often resulting in at least several hours of
13 off-the-clock work per pay period and the underpayment of minimum wages owed to PLAINTIFF.
14 Based on information and belief, other Class Members and Aggrieved Employees also were required
15 to respond to work-related calls and/or messages outside of their scheduled shift times and/or
16 perform other off-the-clock work, such as, but not limited to, running errands for DEFENDANTS
17 without being compensated for this time spent under DEFENDANTS control, resulting in the
18 underpayment of minimum wages to Class Members and Aggrieved Employees.

19 23. Based on information and belief, DEFENDANTS implemented a time-rounding
20 system that as applied systematically deprived PLAINTIFF and other Class Members and
21 Aggrieved Employees of compensable time because the time-rounding system implemented by
22 DEFENDANTS would almost always, if not always, result in understating actual work time. For
23 example, based on information and belief, DEFENDANTS implemented a practice of rounding the
24 actual time worked and recorded by PLAINTIFF and other Class Members and Aggrieved
25 Employees and/or requiring PLAINTIFF and other Class Members and Aggrieved Employees to
26 round their own hours, which more often than not, resulted in PLAINTIFF and other Class Members
27 and Aggrieved Employees not being paid for all time worked and thus the underpayment of
28 minimum and overtime wages owed to PLAINTIFF and other Class Members and Aggrieved

1 Employees. DEFENDANTS' failure to pay for all time worked by virtue of its time-rounding
2 practices and/or only paying for scheduled hours rather than for actual time worked resulted in the
3 underpayment of minimum wages owed to PLAINTIFF and Class Members and Aggrieved
4 Employees as well as unpaid overtime wages for those Class Members and Aggrieved Employees
5 who worked more than eight (8) hours in a day and/or forty hours in a week.

6 24. Based on information and belief, DEFENDANTS failed to pay twice Class Members
7 and Aggrieved Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per day
8 and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week,
9 in violation of California's overtime law.

10 25. Based on information and belief, DEFENDANTS failed to incorporate all non-
11 discretionary remuneration, including but not limited to, non-discretionary bonus/incentive pay
12 and/or other non-discretionary compensation into the regular pay rate(s) of pay used to calculate the
13 owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed
14 to PLAINTIFF and other Class Members and Aggrieved Employees. For example, based on
15 information and belief, DEFENDANTS regularly compensated PLAINTIFF with non-discretionary
16 bonuses/incentive pay and/or other non-discretionary compensation during pay periods in which
17 PLAINTIFF worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary
18 compensation into the regular pay rate(s) used to calculate the owed overtime rate, resulting in the
19 miscalculation of the owed overtime rate(s) of pay and the underpayment of overtime wages owed
20 to PLAINTIFF. Based on information and belief, DEFENDANTS also failed to incorporate all non-
21 discretionary compensation into the regular rate(s) of pay for purposes of calculating and paying
22 overtime and double time wages to other Class Members and Aggrieved Employees, resulting in
23 the underpayment of overtime wages and double time wages owed to Class Members and Aggrieved
24 Employees.

25 26. Based on information and belief, DEFENDANTS had actual and/or constructive
26 knowledge that its time-rounding and/or payment according to scheduled hours rather than actual
27 time worked, auto-deduction policies, policies and practices that failed to relieve Class Members
28 and Aggrieved Employees of all duties and employer control during unpaid meal periods, and other

1 off-the-clock work policies and practices described above resulted in the underpayment of minimum
2 wages, overtime wages and double time wages, in violation of California's minimum and overtime
3 wage laws and other violations described below.

4 **27. Meal Period Violations.** PLAINTIFF and Class Members and Aggrieved
5 Employees regularly worked shifts of five and one half (5 ½) hours or more and were entitled to at
6 least one thirty-minute, uninterrupted, off-duty meal break per shift. However, DEFENDANTS
7 failed to provide PLAINTIFF and the Class Members and Aggrieved Employees with timely, thirty-
8 minute, uninterrupted meal breaks and/or required PLAINTIFF and the Class Members and
9 Aggrieved Employees to work through purported meal breaks, remain on DEFENDANTS'
10 premises/tethered to their worksites and/or remain tethered to DEFENDANTS' communication
11 devices during purported meal periods. Based on information and belief, PLAINTIFF and other
12 Class Members and Aggrieved Employees were not adequately informed, authorized, instructed
13 about, nor permitted an opportunity to take lawful meal breaks per California law.

14 **28.** PLAINTIFF and other Class Members and Aggrieved Employees were consistently
15 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
16 late meal periods, interrupted meal periods and/or work through part or all their meal periods due to
17 the nature and constraints of their job duties, lack of relief workers available, and/or commentary
18 from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks
19 completely. For example, PLAINTIFF regularly took her meal break after working more than five
20 hours. On many days, PLAINTIFF was unable to take a meal break until after working more than
21 seven hours and/or would have to wait until the end of her shift to take her meal break. At times,
22 PLAINTIFF was required to assist customers and/or complete other work tasks while clocked out
23 for what should have been off-duty meal periods. On information and belief, other Class Members
24 and Aggrieved Employees were also unable to take timely, uninterrupted thirty-minute meal periods
25 due to the nature of their job, workload, and/or lack of relief workers.

26 **29.** DEFENDANTS implemented policies and practices that failed to relieve
27 PLAINTIFF and other Class Members and Aggrieved Employees of all duties and DEFENDANTS'
28 control during unpaid meal breaks. For example, at least three times per week, DEFENDANTS

1 required PLAINTIFF to remain onsite for the duration of her meal periods due to DEFENDANTS'
2 lack of adequate coverage for these shifts. Based on information and belief, DEFENDANTS had a
3 uniform policy and practice of requiring Class Members and Aggrieved Employees to remain
4 tethered to their worksites and/or otherwise on duty during unpaid meal periods. This time spent
5 under DEFENDANTS control was not compensated, resulting in the underpayment of minimum
6 wages in addition to violations of California's meal period laws.

7 30. Despite failing to provide lawful meal periods, DEFENDANTS implemented a
8 policy and/or practice of automatically deducting at least thirty minutes per shift for these
9 missed/unlawful meal periods, despite having actual and/or constructive knowledge that
10 PLAINTIFF and other Class Members and Aggrieved Employees did not receive compliant meal
11 periods.

12 31. Moreover, based on information and belief, PLAINTIFF consistently took late meal
13 periods due to, including but not limited to, unaccounted for pre-shift work time. Based on
14 information and belief, other Class Members and Aggrieved Employees were also suffered and/or
15 permitted to take their meal periods late/after the fifth hour of work due to, among other reasons,
16 unaccounted for pre-shift off-the-clock work tasks DEFENDANTS required.

17 32. Based on information and belief, DEFENDANTS failed to provide Class Members
18 and Aggrieved Employees with duty-free, uninterrupted, thirty-minute, second meal periods before
19 the end of the tenth hour of work when working shifts lasting more than ten and/or twelve hours.
20 Based on information and belief, Class Members and Aggrieved Employees were only provided
21 with a single meal period per shift, regardless of the number of hours worked, and as explained
22 above, that single meal period was often non-compliant. For example, at times, PLAINTIFF worked
23 shifts lasting more than ten hours but was not provided with any second meal period, and her first
24 meal period was often non-compliant.

25 33. Based on information and belief, DEFENDANTS had actual and/or constructive
26 knowledge that DEFENDANTS' policies and practices resulted in the denial of timely,
27 uninterrupted, off-duty meal periods owed to PLAINTIFF and other Class Members and Aggrieved
28 Employees, in violation of California's meal period laws.

1 34. DEFENDANTS also failed to keep accurate records of the start and end times of
2 PLAINTIFF's and Class Members and Aggrieved Employees' meal period start and end times.
3 Based on further information and belief, DEFENDANTS illegally rounded the start and end times
4 of meal periods resulting in Class Members and Aggrieved Employees not being paid for all time
5 worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021)
6 11 Cal.5th 58.

7 35. Based on further information and belief, DEFENDANTS did not have a compliant
8 written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice.
9 Liability for the aggrieved employees can be established by evidence that an employer adopted a
10 uniform corporate break policy that failed to give full effect to California law and the applicable
11 Wage Order requirements. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

12 36. PLAINTIFF is further informed and believes and thereon alleges that
13 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
14 deduction policies and practices resulted in the denial of meal periods owed to PLAINTIFF and
15 other Class Members and Aggrieved Employees, in violation of California's meal period laws.

16 37. Upon information and belief, DEFENDANTS failed to pay PLAINTIFF and other
17 Class Members and Aggrieved Employees, an additional hour of wages at their respective regular
18 rates of compensation for each workday a proper meal period was not provided. DEFENDANTS
19 either failed to pay a meal period premium at all for each workday a proper meal period was not
20 provided and/or failed to pay the proper meal period premium for failure to incorporate all non-
21 discretionary remuneration, including but not limited to, non-discretionary bonuses/incentive pay
22 and/or other non-discretionary compensation into the regular rate or compensation for purposes of
23 calculating the owed meal period premium.

24 38. **Rest Periods Violations.** DEFENDANTS did not authorize or permit PLAINTIFF
25 and other Class Members and Aggrieved Employees to take legally compliant rest periods at a rate
26 of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in
27 the middle of the work period, as required by law. PLAINTIFF and other Class Members and
28 Aggrieved Employees were not adequately informed, authorized, instructed about, nor permitted an

1 opportunity to take legally compliant rest breaks.

2 39. PLAINTIFF and other Class Members and Aggrieved Employees were consistently
3 unable to take a net, ten-minute, off-duty rest period for every four (4) hours worked or major
4 fraction thereof because of the nature and constraints of their job duties and/or commentary from
5 supervisors pressuring them to take non-compliant rest breaks or skip rest breaks completely. Any
6 purported rest periods would be interrupted, cut short, on duty, restricted to premises, and/or late
7 due to the nature and constraints of the Class Members and Aggrieved Employees' job duties,
8 understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely
9 and/or take non-compliant rest breaks.

10 40. PLAINTIFF and other Class Members and Aggrieved Employees were pressured to
11 complete their work duties according to a designated schedule such that rest breaks were only taken
12 once jobs were completed/as time permitted. For example, PLAINTIFF was often forced to work
13 through her rest periods due to understaffing, the need to assist customers and/or complete other
14 work tasks.

15 41. Based on information and belief, DEFENDANTS implemented policies and/or
16 practices that failed to relieve Class Members and Aggrieved Employees of all duties and
17 DEFENDANTS' control during rest breaks. For example, on information and belief, Class Members
18 and Aggrieved Employees were required to remain on the worksite premises and/or remained
19 tethered to DEFENDANTS' communication devices during purported rest periods and were thus
20 subjected to DEFENDANTS' control. For instance, PLAINTIFF was required to monitor her cell
21 phone and computer for work communications throughout her shifts, including but not limited to,
22 during any purported rest periods. As such, DEFENDANTS failed to provide PLAINTIFF and
23 other Class Members and Aggrieved Employees with net, ten-minute, uninterrupted, off-duty rest
24 periods in compliance with California law.

25 42. Based on information and belief, DEFENDANTS did not have a lawful policy,
26 instruction, or practice as to the taking, length, timing, or duty-free nature of rest periods. For
27 instance, DEFENDANTS only provided PLAINTIFF and other Class Members and Aggrieved
28 Employees with a single rest period per shift, even on shifts lasting longer than six (6) hours, and

1 any purported rest periods were non-compliant. For example, PLAINTIFF and other Class
2 Members and Aggrieved Employees were required to remain onsite during any rest periods and thus
3 remained under DEFENDANTS control during purportedly off-duty rest periods, in violation of
4 California's rest period laws. Based on further information and belief, DEFENDANTS failed to
5 authorize and permit rest periods that were a "net" ten minutes in a suitable rest area; instead, to the
6 extent rest periods were provided, DEFENDANTS limited PLAINTIFF and other Class Members
7 and Aggrieved Employees to only ten-minute rest periods, requiring them to be back at their
8 workstations within ten minutes of leaving, in violation of California rest period law.

9 43. Moreover, based on information and belief, DEFENDANTS failed to provide any
10 form of a third rest period on shifts lasting longer than ten hours. For example, when PLAINTIFF
11 worked shifts exceeding ten hours, PLAINTIFF was not provided with any third rest period.

12 44. Despite not providing PLAINTIFF and other Class Members and Aggrieved
13 Employees with all owed legally compliant rest periods, DEFENDANTS failed to pay PLAINTIFF
14 and other Class Members and Aggrieved Employees, an additional hour of wages at their respective
15 regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either
16 failed to pay a rest period premium at all for each workday a proper rest period was not provided
17 and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary
18 remuneration, including but not limited to, non-discretionary bonuses/incentive pay and/or other
19 non-discretionary compensation into the regular rate of compensation for purposes of calculating
20 the owed rest period premium.

21 45. **Inaccurate Wage Statements.** DEFENDANTS failed to provide PLAINTIFF and
22 the Class Members and Aggrieved Employees with accurate wage statements that complied with
23 Labor Code section 226. DEFENDANTS provided wage statements that failed to indicate the total
24 wages earned (including meal and rest period premiums), and total hours worked by PLAINTIFF
25 and other Class Members and Aggrieved Employees (by virtue of the payment according to
26 scheduled hours rather than actual hours worked, automatic deduction for meal periods, time-
27 rounding policies and practices and other off-the-clock work policies and practices, all explained in
28 greater detail above). Accordingly, DEFENDANTS violated Labor Code section 226 by providing

1 wage statements that were inaccurate and failed to include all of the statutorily required information,
2 including but not limited to, total hours worked.

3 46. In addition, DEFENDANTS violated Labor Code section 226 by issuing wage
4 statements to Class Members and Aggrieved Employees that failed to list all applicable hourly rates
5 in effect during the pay period, due to, including but not limited to, failing to list an hourly
6 rate/overtime rate at all and/or failing to list the correct overtime rate for each hour of overtime
7 worked by PLAINTIFF and other Class Members and Aggrieved Employees because
8 DEFENDANTS did not incorporate all non-discretionary compensation, such as, but not limited to,
9 non-discretionary bonuses/incentive pay and/or other non-discretionary compensation into the
10 regular pay rate for purposes of calculating the owed overtime rate.

11 47. Separately, based on information and belief, DEFENDANTS violated Labor Code
12 section 226 because the wage statements issued by DEFENDANTS failed to list the correct name
13 and/or address of the legal entity that is the employer. For example, wage statements
14 DEFENDANTS issued to PLAINTIFF identify “ELA Foods Inc” as the employer. However,
15 documents in PLAINTIFF’s personnel file, including but not limited to, DEFENDANTS’ 2810.5
16 Notice to Employee, safety rules, sexual harassment policy documents, among other policy
17 documents/agreements, as well as various letterheads contained in PLAINTIFF’s personnel file all
18 identify the following entity as the employer: “Pop Food Services Inc.”. As a result, the wage
19 statements provided to PLAINTIFF and the Class Members and Aggrieved Employees were not
20 accurate and did not include all of the statutorily required information, including but not limited to
21 the name and address of the legal entity that is the employer.

22 48. Separately, based on information and belief, DEFENDANTS issued wage statements
23 to PLAINTIFF, Class Members and Aggrieved Employees that further violate Labor Code section
24 226(a) by, including but not limited to, failing to list the accurate name of the employee on its issued
25 wage statements. For example, PLAINTIFF’s name is “Antoinette Brown,” yet DEFENDANTS’
26 wage statements issued to PLAINTIFF list PLAINTIFF’s name as “Antoinette *Brow*” (emphasis
27 added). As a result, the wage statements provided to PLAINTIFF, Class Members and Aggrieved
28 Employees were not accurate and did not include all of the statutorily required information,

1 including but not limited to, name of the employee.

2 49. As a result, PLAINTIFF and other Class Members and Aggrieved Employees have
3 suffered injury as they could not easily determine whether they received all wages owed to them
4 and whether they were paid for all hours worked. Moreover, as a result of DEFENDANTS' failure
5 to list the correct legal entity that is the employer, PLAINTIFF and the Class Members and
6 Aggrieved Employees have suffered injury as there was confusion as to which entity to contact
7 regarding any question(s) they had about wages paid and unpaid.

8 50. **Unreimbursed Business Expenses.** DEFENDANTS required PLAINTIFF and
9 Class Members and Aggrieved Employees to incur business expenses as a direct consequence of the
10 performance of their job duties without providing reimbursement, in violation of Labor Code section
11 2802.

12 51. Based on information and belief, PLAINTIFF and Class Members and Aggrieved
13 Employees were improperly required to provide and maintain work tools that are supposed to be the
14 responsibility of the employer.

15 52. At all relevant times hereto, DEFENDANTS shifted its costs of doing business onto
16 PLAINTIFF and other Class Members and Aggrieved Employees by requiring them to pay for its
17 business expenses, including but not limited to, work uniforms/clothing/protective gear and/or the
18 use of Class Members and Aggrieved Employees' personal mobile phone and data usage for work
19 related purposes including but not limited to receiving and responding to work related messages
20 and/or phone calls. Based on information and belief, Class Members and Aggrieved Employees
21 were not reimbursed for the cost of using their personal phone for work related purposes and/or the
22 cost of purchasing and/or maintaining work uniforms/clothing/protective gear (e.g., face masks).
23 For example, PLAINTIFF consistently received calls and/or messages to her personal phone/mobile
24 device from other managers and/or supervisors and/or coworkers for work-related purposes but was
25 not reimbursed by DEFENDANTS for these business expenses. Based on information and belief,
26 Class Members and Aggrieved Employees were not reimbursed for the cost of using their personal
27 phone for work related purposes.

28 53. Based on further information and belief, Class Members and Aggrieved Employees

1 incurred expenses associated with being required to use their personal vehicles for work without
2 receiving any and/or full reimbursement from DEFENDANTS for the costs they incurred in
3 connection therewith. For example, DEFENDANTS required PLAINTIFF at least once per month
4 to use her personal vehicle to run errands (e.g., to the grocery store, hardware store) and/or travel
5 between DEFENDANTS' various locations to pick up and/or drop off items. DEFENDANTS did
6 not reimburse PLAINTIFF for the costs associated with using her personal vehicle for these business
7 purposes, including but not limited to, for cost of gas, mileage, and/or wear and tear on the vehicle.

8 54. As a pattern and practice, DEFENDANTS regularly failed to reimburse and
9 indemnify PLAINTIFF and other Class Members and Aggrieved Employees for business expenses.
10 Pursuant to California Labor Code section 2802, PLAINTIFF and other Class Members and
11 Aggrieved Employees were entitled to be reimbursed for all reasonable expenses associated with
12 carrying out orders by DEFENDANTS and/or carrying out the duties assigned by DEFENDANTS.

13 55. DEFENDANTS' failure to provide PLAINTIFF and other Class Members and
14 Aggrieved Employees with full reimbursement for all reasonable expenses associated with carrying
15 out their duties required that PLAINTIFF and other Class Members and Aggrieved Employees
16 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

17 56. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
18 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
19 Employees all wages that were due and owing upon termination or resignation. Based on
20 information and belief, DEFENDANTS untimely provides final wages to Class Members and
21 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

22 57. Upon separation of employment, Class Members' and Aggrieved Employees' final
23 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
24 and/or paid time off. Moreover, Class Members' and Aggrieved Employees' final paychecks, once
25 provided, did not include all wages owed as they were devoid of, including but not limited to, all
26 owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave
27 and/or paid time off wages at the properly accrued rates. For example, PLAINTIFF resigned from
28 her employment, on or about March 16, 2022, but was not provided with any final paycheck until

1 at least on or about March 24, 2022, and her final paycheck did not contain all wages owed,
2 including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation
3 pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

4 58. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
5 engaged in these same herein described unlawful practices with regard to all of the Class Members
6 and Aggrieved Employees and that DEFENDANTS applied these same herein described unlawful
7 practices to all of its employees that it applied to PLAINTIFF.

8 **FIRST CAUSE OF ACTION**

9 **Recovery of Unpaid Minimum Wages and Liquidated Damages (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 59. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 60. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
12 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
13 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
14 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
15 period is unlawful.

16 61. DEFENDANTS violated California’s minimum wage laws by failing to compensate
17 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
18 DEFENDANTS’ auto-deduction policy and practice for meal periods, paying for scheduled hours
19 instead of actual hours worked, off the-clock work policies and practices, failure to relieve
20 PLAINTIFF and Class Members of all duties and employer control and/or otherwise unlawful meal
21 period practices, and rounded time entries (described above).

22 62. DEFENDANTS had and continue to have a continuous policy of failing to pay
23 PLAINTIFF and Class Members for all hours worked.

24 63. Based on information and belief, DEFENDANTS had and continue to have a
25 continuous policy of rounding PLAINTIFF and Class Members time punches, including the start
26 and end of shift times, and meal period time punches and/or automatically deducting at least thirty
27 minutes per shift for meal periods that were not actually afforded, resulting in unpaid minimum
28 wages.

1 64. Based on information and belief, DEFENDANTS had and continue to have a
2 continuous policy of paying PLAINTIFF and Class Members for scheduled hours, rather than actual
3 hours worked.

4 65. Based on information and belief, DEFENDANTS had and continue to have a
5 continuous policy of requiring PLAINTIFF and the Class Members to perform work prior to
6 clocking in for their shifts and/or after clocking out for their shifts and/or outside of their scheduled
7 shift times and during uncompensated meal periods, resulting in unpaid minimum wages.

8 66. Based on information and belief, DEFENDANTS had actual or constructive
9 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
10 meal periods, failing to relieve employees of all duties and employer control during unpaid meal
11 periods, policy and practice of payment according to scheduled time rather than actual work time as
12 well as other off-the-clock work described above, resulted in the underpayment of minimum wages
13 owed to PLAINTIFF and other Class Members.

14 67. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
15 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
16 plus attorney's fees and costs, in an amount to be proved at trial.

17 **SECOND CAUSE OF ACTION**

18 **Recovery of Unpaid Overtime Wages**

19 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

20 68. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 69. Employees in California must be paid overtime, equal to one and one-half times the
22 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
23 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
24 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
25 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
26 consecutive day of work in a workweek, unless they are exempt.

27 70. PLAINTIFF and the Class Members worked overtime hours for which they were not
28 compensated by DEFENDANTS by virtue of DEFENDANTS' automatic deduction and time
rounding policies and practices for meal periods, payment according to scheduled hours worked

1 rather than actual time worked/mandated pre-shift and/or post-shift off-the clock work, as well as
2 other off-the-clock work and/or unpaid work completed during meal periods, and other off-the-clock
3 work (all described above).

4 71. Based on information and belief, DEFENDANTS further violated California's
5 overtime wage laws by failing to incorporate all non-discretionary remuneration, including but not
6 limited to, non-discretionary bonus/incentive pay and/or other non-discretionary pay into the regular
7 rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and
8 underpayment of overtime wages owed to PLAINTIFF and Class Members.

9 72. DEFENDANTS' conduct described above is in violation of California Labor Code
10 sections 510 and 1194 and all applicable Wage Orders.

11 73. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
12 wages, plus attorney's fees and costs, in an amount to be proved.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Provide Meal Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

15 74. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 75. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, employers
17 must employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works
18 more than five (5) hours in a workday, and it must be provided within the first five (5) hours the
19 employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and
20 (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also
21 provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an
22 employee works more than (10) hours in a workday, and it must be provided before the end of the
23 10th hour of work. *Ibid*.

24 76. Meal periods can be waived, but only under the following circumstances: (1) if an
25 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
26 required meal period may be waived by mutual consent of the employer and employee, and (2) if
27 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
28 the required second meal period may be waived by mutual consent of the employer and employee,

1 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
2 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
3 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
4 period, it is presumed no meal period was provided.

5 77. Employers must pay employees an additional hour of wages at the employees'
6 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
7 meal period, first meal period provided after five (5) hours, second meal period provided after 10
8 hours). Lab. Code § 226.7.

9 78. As explained above, PLAINTIFF and the Class Members were consistently unable
10 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
11 forced to take late meal periods, interrupted meal periods and/or work through part or all of their
12 meal periods due to the nature and constraints of their job duties, and/or commentary from
13 DEFENDANTS pressuring them to take non-compliant meal periods or skip meal periods
14 completely.

15 79. Based on information and belief, DEFENDANTS had and continue to have a
16 continuous policy of rounding the start and end times of employees' meal periods and/or
17 automatically deducting thirty minutes per shift despite having actual and/or constructive
18 knowledge that PLAINTIFF and Class Members did not receive compliant meal periods.

19 80. Moreover, Class Members did not receive a timely, uninterrupted second meal period
20 when working shifts over ten (10) hours in a workday.

21 81. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
22 periods in violation of California law or failed to pay the proper meal period premium for failure to
23 incorporate all non-discretionary remuneration including but not limited to non-discretionary
24 bonuses/incentive pay and/or other non-discretionary compensation into the regular rate or
25 compensation for purposes of calculating the owed meal period premium.

26 82. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
27 required meal periods, or with proper compensation in lieu thereof. PLAINTIFF is informed and
28 believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that their

1 time-rounding and auto-deduction policies and practices, and off-the-clock work policies and
2 practices, and other policies and practices that failed to relieve PLAINTIFF and other Class
3 Members of all duties and employer control during purported meal periods resulted in the denial of
4 compliant meal periods in violation of California's meal period laws.

5 83. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
6 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
7 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
8 all in an amount to be proved at trial.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

11 84. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

12 85. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
13 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
14 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
15 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
16 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
17 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
18 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
19 The rest period requirement obligates employers to permit and authorize employees to take off-duty
20 rest periods, meaning employers must relieve employees of all duties and relinquish control over
21 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. If
22 the employer fails to provide any required rest period, the employer must pay the employee one
23 hour of pay at the employee's regular rate of compensation for each workday the employer did not
24 provide at least one legally required rest period, pursuant to Labor Code section 226.7.

25 86. PLAINTIFF and the Class Members did not receive compliant, timely 10-minute rest
26 periods for every four (4) hours worked or major fraction thereof. Any purported rest periods were
27 interrupted, cut short, on duty, and/or late. PLAINTIFF and the Class Members were pressured to
28 complete their work such that rest breaks were only taken once tasks were completed/as time

1 permitted.

2 87. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
3 period premium to PLAINTIFF and other Class Members for each workday in which there was a
4 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
5 premium was paid, DEFENDANTS failed to include non-discretionary compensation, including but
6 not limited to, non-discretionary bonuses/incentive pay and/or other non-discretionary
7 compensation into the regular rate of compensation for purposes of determining the owed rest period
8 premium.

9 88. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
10 hour of additional pay at the regular rate of compensation for each workday that a required rest
11 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
12 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
13 trial.

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Furnish Accurate Itemized Wage Statements (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

16 89. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 90. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
18 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
19 wage statement accurately stating the following:

20 (1) gross wages earned, (2) total hours worked by the employee,
21 except for any employee whose compensation is solely based on a
22 salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial
24 Welfare Commission, (3) the number of piece-rate units earned and
25 any applicable piece rate if the employee is paid on a piece-rate basis,
26 (4) all deductions, provided that all deductions made on written orders
27 of the employee may be aggregated and shown as one item, (5) net
28 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

1 91. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
2 meal and rest periods that complied with Labor Code section 226.7, the wage statements
3 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
4 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
5 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
6 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee, in violation of Labor Code section 226(a)(9).

9 92. Moreover, due to violations detailed above, including but not limited to,
10 DEFENDANTS' failure to pay minimum and overtime wages for all hours worked, failure to pay
11 all sick leave wages at the proper rates, and failure to provide meal and rest break premiums,
12 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
13 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the earned
14 gross and net wages earned and the correct applicable rates of pay for all hours worked. As described
15 above, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation
16 earned during the pay period into the overtime pay rate calculation, and as such, failed to display
17 the proper overtime rate(s) for each hour of overtime worked by Class Members.

18 93. Moreover, wage statements issued by DEFENDANTS failed to indicate the earned
19 gross and net wages earned during the pay period, the correct applicable rates of pay for all hours
20 worked, and the "total hours worked" by PLAINTIFF and Class Members (by virtue of the
21 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
22 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
23 hours worked, mandated pre-shift and/or post-shift off-the-clock work and other off-the-clock work
24 policies and practices, all described in greater detail *supra*), which results in a violation of Labor
25 Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference
26 of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th
27 1308, 1337).

28 94. DEFENDANTS' failure to accurately list all hours worked on all wage statements

1 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
2 Members over whether they received all wages owed to them.

3 95. As a result, PLAINTIFF and other Class Members have suffered injury as they could
4 not easily determine whether they received all wages owed to them and whether they were paid for
5 all hours worked.

6 96. Separately, and independent of the above allegations, based on information and
7 belief, DEFENDANTS issued wage statements to PLAINTIFF and other Class Members that
8 further violate Labor Code section 226(a), by failing to list the correct name and/or address of the
9 legal entity that is the employer. Additionally, DEFENDANT further violated Labor Code section
10 226(a) by failing to list the name of the employee on DEFENDANTS' issued wage statements.

11 97. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and the
12 Class Members with accurate, itemized wage statements.

13 98. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
14 Members have suffered injury. The absence of accurate information on their wage statements has
15 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
16 mathematical computations to determine the amount of wages owed, and will cause difficulty and
17 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
18 submission of inaccurate information about wages and amounts deducted from wages to state and
19 federal government agencies. As a result, PLAINTIFF and the Class Members are required to
20 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
21 Members from having to reconstruct time and pay records than if DEFENDANT had complied with
22 its legal obligations.

23 99. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
24 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
25 Section 226 violation occurred and one hundred dollars per employee per violation for each
26 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

27 100. Pursuant to California Labor Code § 226(h), PLAINTIFF and the Class Members are
28 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with

1 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
2 provide currently employed Class Members with inaccurate wage statements in violation of
3 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
4 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
5 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
6 with California Labor Code § 226(a).

7 101. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class
8 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
9 attorneys' fees, and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 **Failure to Timely Pay All Wages Due Upon Separation of Employment (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 102. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

13 103. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
15 payable immediately."

16 104. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
17 employee not having a written contract for a definite period quits his or her employment, his or her
18 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
19 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
20 to his or her wages at the time of quitting."

21 105. Based in information and belief, DEFENDANTS fail to timely pay final wages to
22 Class Members upon separation of employment in violation of Labor Code section 201-202 and/or
23 fail to timely provide final wages with all owed vacation pay and/or paid time off. Based on
24 information and belief, DEFENDANTS untimely provide final wages to Class Members without
25 regard to the timing requirements of Labor Code sections 201-202.

26 106. Moreover, final paychecks once provided to Class Members do not include all wages
27 owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages,
28 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly

1 accrued rates.

2 107. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
3 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
4 pay, plus attorney's fees and costs, in an amount to be proved at trial.

5 **SEVENTH CAUSE OF ACTION**
6 **Failure to Reimburse Business Expenses**
7 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

8 108. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 109. California law requires employers to indemnify their employees for all necessary
10 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
11 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
12 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
13 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
14 incurred by the employee enforcing the rights granted by this section."

15 110. Among other things, under California law, when employees must use their personal
16 cellphones for work-related purposes, the employer must reimburse them for a reasonable
17 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
18 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
19 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
20 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
21 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
22 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further,
23 "any contract or agreement, express or implied, made by any employee to waive the benefits of this
24 article or any part thereof, is null and void, and this article shall not deprive any employee or his
25 personal representative of any right or remedy to which he is entitled to under the laws of this State."
26 *See* Cal. Lab. Code § 2804.

27 111. As described above, PLAINTIFF and the Class Members were improperly required
28 to pay for business expenses that are legally the responsibility of the employer, including but not
limited to costs associated with purchase and/or maintenance of work uniforms/clothing/protective

1 gear and/or the use of Class Members' personal mobile phone and data usage for work-related
2 purposes, including but not limited to, receiving and responding to work related messages and/or
3 phone calls. In addition, DEFENDANTS required PLAINTIFF and other Class Members to use
4 their personal vehicles to perform their jobs duties without providing any and/or full reimbursement
5 for all reasonable expenses PLAINTIFF and other Class Members incurred in connection therewith.

6 112. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
7 reimbursement for all reasonable expenses associated with carrying out their duties required that
8 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
9 violation of Labor Code section 2802.

10 113. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
11 Members have suffered injury in that they were not completely reimbursed as mandated by
12 California law.

13 114. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
14 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
15 attorneys' fees, and costs of suit.

16 **EIGHTH CAUSE OF ACTION**

17 **Unfair Competition**

18 **(By PLAINTIFF and the Class Members Against All Defendants)**

19 115. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 116. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair
21 competition within the meaning of California Business and Professions Code section 17200. This
22 unfair conduct includes all unlawful conduct alleged herein, including but not limited to:
23 DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and
24 practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest or
25 pay proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate
26 itemized wage statements; DEFENDANTS' failure to provide paid sick leave/all paid time off
27 provided in lieu thereof at the properly accrued rates due to, including but not limited to,
28 DEFENDANTS' failure to base the accrued sick leave on the correct number of hours worked;
DEFENDANTS' failure to reimburse business expenses; and DEFENDANTS' failure to timely pay

1 all wages due during and upon separation of employment.

2 117. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
3 California Labor Code, DEFENDANTS have gained a competitive advantage over other
4 comparable companies doing business in the State of California that comply with their obligations
5 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu
6 thereof, to provide proper notice and properly accrue and pay sick time benefits, to provide complete
7 and accurate itemized wage statements, to reimburse employees for all business expenses, to pay all
8 owed minimum and overtime wages, and to pay all wages due during and upon separation of
9 employment of their employees.

10 118. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
11 and the Class Members have suffered injury in fact and lost money or property, as described in more
12 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,
13 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
14 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
15 unlawful and unfair business practices.

16 119. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
17 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging
18 in each of the unlawful practices and policies set forth herein.

19 120. PLAINTIFF also seeks an award of attorneys' fees pursuant to Code Civ. Proc.
20 section 1021.5.

21 **NINTH CAUSE OF ACTION**

22 **Violation of the Private Attorneys General Act of 2004**

23 **(By PLAINTIFF and the Aggrieved Employees Against All Defendants)**

24 121. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

25 122. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
26 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of herself, the
27 State of California and Aggrieved Employees, regarding violations of the California Labor Code as
28 set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

All current and former non-exempt employees employed by DEFENDANTS

1 in California at any time from one year plus 65 days from filing of the initial
2 Complaint through the present ("PAGA Period").

3 123. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
4 section 2699(c), as she was employed by DEFENDANTS during the applicable statutory limitations
5 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
6 PLAINTIFF seeks to recover on behalf of herself, the State of California, and all other Aggrieved
7 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
8 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
9 Employees, as she was jointly employed by DEFENDANTS and is thereby affected by one or more
10 of the alleged violations. See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
11 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
12 the employer - regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

13 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

14 124. On August 10, 2022, PLAINTIFF, through her counsel, gave written notice by online
15 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
16 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
17 in this Complaint ("PAGA Notice"). The PAGA Notice outlined PLAINTIFF's claims for violations
18 of the California Labor Code and the applicable wage orders on behalf of herself, the State of
19 California and other Aggrieved Employees. The LWDA assigned PLAINTIFF the following case
20 number: LWDA-CM-900714-22. Attached hereto as **Exhibit 1** is a true and correct copy of
21 PLAINTIFF's PAGA Notice that was also mailed certified to DEFENDANTS.

22 125. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
23 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
24 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
25 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
26 Consequently, PLAINTIFF's right to file the instant lawsuit has duly accrued.

27 126. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
28 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46

1 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

2 127. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
3 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
4 Labor Code sections, 201-203, 210, 216, 221-223, 226, 226.7, 227.3, 245-248.5, 432, 432.5, 432.7,
5 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
6 applicable Wage Orders.

7 128. As set forth above, DEFENDANTS have committed numerous violations of the
8 California Labor Code due to including but not limited to their failure to pay all owed minimum
9 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
10 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
11 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
12 are in addition to any other relief available under the Labor Code.

13 129. Additionally, DEFENDANTS have violated the following Labor Code sections and
14 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

15 130. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
16 keep "accurate and complete" payroll records showing, among other things, the hours worked daily
17 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
18 time records reflecting the times during which all owed meal periods were provided each day.

19 131. Due to DEFENDANTS' automatic meal break deductions, failure to relieve
20 employees of all duties and employer control during meal periods, time rounding and/or payment
21 according to scheduled hours rather than actual hours worked, and other off-the-clock work policies
22 and practices described above, DEFENDANTS failed, and continue to fail, to keep accurate and
23 complete records as required by law, including but not limited to the following records: total daily
24 hours worked, applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved
25 Employees began and ended each work period, time records of meal periods, shift start times and
26 end times, and accurate itemized wage statements.

27 132. DEFENDANTS' failure to keep "accurate and complete" payroll records for
28 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all

1 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
2 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
3 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
4 period during which the referenced statutes and Wage Order provisions were violated.²

5 133. **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5,**
6 **and 432.** Time and Pay Records: Labor Code section 226 and all applicable IWC Wage Orders,
7 section 7 require that employers keep the following information on file for each employee for a
8 minimum of three years: The employee's dates of employment; the employee's hourly rates and the
9 corresponding number of hours worked by the employee at each hourly rate, when the employee
10 begins and ends each work period (including meal periods) and split intervals; total hours worked
11 by the employee; all deductions; gross wages earned; and net wages earned.

12 134. Section (b) of Labor Code section 226 further requires employers to "afford current
13 and former employees the right to inspect or receive a copy of records pertaining to their
14 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
15 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
16 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
17 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
18 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
19 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
20 the employer. Lab. Code section 226(f).

21 135. Personnel Records. In addition to their right to time and pay records, employees, and
22 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
23 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
24 section 432 further specifies that employers must furnish copies of all employment records bearing

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
2 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
3 from the date the employer receives a written request." An employer's failure to comply within this
4 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
5 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

6 136. Based on information and belief, DEFENDANTS fail to timely produce or make
7 available a current or former employee's personnel records and/or payroll records, including but not
8 limited to, time records, when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or
9 the applicable Wage Order. For example, PLAINTIFF sent a request for payroll and personnel
10 records to DEFENDANTS. Yet, DEFENDANTS failed to timely produce complete records,
11 including but not limited to, time records, within the time periods delineated by California labor
12 law. Based on information and belief, DEFENDANTS failed and continues to fail to timely produce
13 complete payroll and personnel records when requested by other Aggrieved Employees.

14 137. These violations subject DEFENDANTS to penalties under Labor Code sections
15 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for
16 each Aggrieved Employee, results in a separate civil penalty.

17 138. **Sick Leave Violations:** DEFENDANTS violated California's paid sick leave laws
18 including, Labor Code sections 245-248.5; DEFENDANTS failed to provide proper sick leave to
19 Aggrieved Employees, due to, including but not limited to, DEFENDANTS' failure to account for
20 the actual hours worked by virtue of DEFENDANTS' failure to relieve Aggrieved Employees of all
21 duties and employer control during any unpaid meal periods, mandated pre-shift/post-shift off-the-
22 clock work, payment according to scheduled hours rather than actual time worked and time-
23 rounding policies and practices, as described herein, and or DEFENDANT'S failure to incorporate
24 all forms of non-discretionary remuneration, including but not limited to, non-discretionary
25 bonuses/incentive pay and/or shift differential pay, and/or other non-discretionary compensation
26 into the sick pay calculation. DEFENDANTS further failed to put the Aggrieved Employees on
27 notice of their paid sick leave rights - or thereby putting their entitlement to sick leave in a Labor
28 Code section 2810.5 notice. DEFENDANTS failed to maintain accurate records documenting the

1 hours worked and paid sick days accrued and used by the Aggrieved Employees, in violation of
2 Labor Code section 247.5. DEFENDANTS failed to provide notice of the accrued sick leave
3 amount or balance left for the Aggrieved Employees by failing to provide Aggrieved Employees
4 with a wage statement or separate writing showing the balance of accrued or available sick leave,
5 or paid time off leave provided in lieu of sick leave, on their designated pay dates with the their
6 payment of wages, as required under Labor Code section 246, and thus affected Aggrieved
7 Employees' intelligent exercise of their paid sick leave. But for this failure, Aggrieved Employees
8 who are no longer employed with DEFENDANTS would have used their paid sick leave at least
9 prior to their respective separations, or on several occasions after receiving notice of the available
10 sick leave.

11 **139. Failure to Provide Supplemental Paid Sick Leave.** Labor Code section 248.2
12 provides that all employers with 26 or more employees are required to provide up to 80 hours
13 for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for
14 themselves, to care for a family member or if it is vaccine-related. Based on information and
15 belief, DEFENDANTS violated Labor Code section 248.2 by not providing Aggrieved
16 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave.

17 **140. Refusal to Make Payment.** DEFENDANTS violated and continue to violate Labor
18 Code section 216 by failing to pay PLAINTIFF and Aggrieved Employees for all hours worked at
19 the proper wage rate and by failing to pay PLAINTIFF and Aggrieved Employees an additional
20 hour of pay for each meal/rest period not provided or that was otherwise unlawful. *Gould v.*
21 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

22 **141. Failure to Provide Suitable Resting Facilities.** DEFENDANTS did not provide
23 PLAINTIFF and other Aggrieved Employees with suitable resting facilities during their hours of
24 work, particularly during meal and/or rest periods. Based on information and belief, PLAINTIFF
25 and other Aggrieved Employees were not allowed to sit in the restaurant during working hours, nor
26 were they provided with a break room. Moreover, DEFENDANTS did not inform PLAINTIFF and
27 other Aggrieved Employees of their rights to suitable resting facilities under California law.

28 **142.** Based on information and belief, DEFENDANTS' restaurants/locations are generally

1 similar in layout and design, and there was, and continues to be, space that allows for a resting
2 facility that employees may use to cease work and recover during meal or rest periods.
3 DEFENDANTS could have provided PLAINTIFF and Aggrieved Employees with a resting facility
4 within the restaurant with reasonable or no modification, but instead denied and continues to deny,
5 Aggrieved Employees with suitable areas to rest (e.g. a breakroom). As a result, PLAINTIFF and
6 Aggrieved Employees were forced to adjust to areas not conducive to resting, including but not
7 limited to leaning up against the restaurant wall, or search for facilities outside of the restaurant
8 which are not designated or reserved for their rest, such as their personal vehicles.

9 143. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
10 other Aggrieved Employees violated and continues to violate the applicable Wage Order, and Labor
11 Code section 1198.

12 144. **Seating Violations:** Per section 14(A-B) of all applicable IWC Wage Orders,
13 employees shall be provided with suitable seats when the nature of the work reasonably permits the
14 use of seats and when they are not actively engaged in the work duties that would not permit them
15 to be seated.

16 145. All applicable IWC Wage Orders, Section 14(A-B) provides:

17 (A) All working employees shall be provided with suitable seats when the nature of the
18 work reasonably permits the use of seats.

19 (B) When employees are not engaged in the active duties of their employment and the nature
20 of the work requires standing, an adequate number of suitable seats shall be placed in reasonable
21 proximity to the work area and employees shall be permitted to use such seats when it does not
22 interfere with the performance of their duties.

23 146. Suitable seating is one of the worker protections covered by California's Wage
24 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
25 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
26 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

27 147. Based on information and belief, DEFENDANTS failed to provide Aggrieved
28 Employees with suitable seating, and when such employees were not engaged in duties which

1 required them to stand, no seating was placed in reasonable proximity to their workstations.

2 148. Moreover, based on information and belief, the nature of the work reasonably
3 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
4 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
5 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
6 of seats would not interfere with the performance of their duties.

7 149. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
8 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
9 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
10 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
11 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
12 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
13 Aggrieved Employee, results in a separate civil penalty.

14 150. **Statutory Wage Violations.** As described above, DEFENDANTS willfully and
15 systematically denied PLAINTIFF and other Aggrieved Employees minimum and overtime wages
16 for all hours worked which resulted in the payment of less than the statutorily required wages owed
17 to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but
18 not limited to, overtime wages and minimum wages, to which they were entitled to under California
19 law. Thus, DEFENDANTS violated Labor Code section 223 by paying PLAINTIFF and other
20 Aggrieved Employees lower wages than those they were entitled to while purporting that
21 PLAINTIFF and other Aggrieved Employees were properly paid.

22 151. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
23 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
24 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
25 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
26 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

27 152. **Violation of California Labor Law Posting Requirements/Failure to Provide**
28 **Employees with Notice of State Employment Laws:** The Department of Industrial Relations

1 requires employers to post information related to wages, hours and working conditions in an area
2 frequented by employees where it may be easily read during the workday. Section 22 of all
3 applicable IWC Wage orders mandates an employer keep a copy of the applicable IWC Wage order
4 posted in an area frequented by employees where it may be easily read during the workday. Labor
5 Code section 207 requires an employer to post a Pay Day Notice specifying the regular paydays and
6 the time and place of payment. Labor Code section 1102.8 requires employers provide notice of
7 protections for workplace whistleblowers. Labor Code section 247 requires employers to provide
8 notice to employees of their rights with respect to paid sick leave, including but not limited to,
9 Covid-19 Supplemental Sick Leave.

10 153. At all relevant times, DEFENDANTS knowingly failed to post required state law
11 employment notices and/or any posters/notices were outdated, including but not limited to, the
12 applicable IWC Wage Order, the applicable minimum wage rate, pay date notice, sick leave pay
13 rights, whistleblower protections, and/or other notices pertaining to wages, hours, and working
14 conditions DEFENDANTS was required to provide to PLAINTIFF and other Aggrieved Employees
15 yet failed to provide. For example, PLAINTIFF reports that DEFENDANTS failed to maintain
16 compliant labor law posters within the common areas of DEFENDANTS' restaurant facility.
17 DEFENDANTS' continual and knowing failure to post required state law employment notices
18 subjects DEFENDANTS to substantial civil penalties under the Labor Code for each required notice
19 it refused to post (see, e.g., California Labor Code, Article 1.5, Section 247(c)) - indicating that an
20 employer who willfully violates the posting requirements is subject to a civil penalty of up to \$100
21 for each offense).

22 154. **Standard Conditions of Labor Violations.** DEFENDANTS' unlawful policies and
23 practices described herein also resulted in violations of Labor Code Sections 1198 and 1199, which
24 together, make it unlawful to employ individuals under conditions that are prohibited by the Wage
25 Orders or any provision within Part 4, Chapter 1 of the Labor Code, including section 1174, 1197,
26 and 1198, or order or ruling of the commission.

27 155. Therefore, DEFENDANTS' violations, including but not limited to, with respect to
28 meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable

1 seating, failure to post updated employee notices regarding employment rights, and business
2 expenses, result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to
3 civil penalties under Labor Code sections 1197.1 and 2699.

4 **156. Unlawful Agreements-Unlawful Criminal and Financial Background Checks.**

5 Based on information and belief, DEFENDANTS required PLAINTIFF and other Aggrieved
6 Employees to agree in writing to unlawful conditions of employment, such as, but not limited to,
7 unlawful criminal and/or financial checks as a condition of obtaining and/or continuing
8 employment, in violation of Labor Code section 432.5. Based on further information and belief,
9 DEFENDANTS also required PLAINTIFF to agree in writing to unlawful background checks not
10 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code
11 sections 1786, et seq. (“ICRAA”) and/or the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et
12 seq. (“FCRA”), in violation of Labor Code section 432.5. Based on information and belief,
13 DEFENDANTS asked about arrests not resulting in convictions on its employment application, in
14 violation of Labor Code section 432.7 and or otherwise unlawfully asked about criminal
15 history/unlawfully required the disclosure of criminal history prior to extending a conditional offer
16 of employment and required PLAINTIFF and other Aggrieved Employees to agree in writing to the
17 unlawful disclosures as a condition of employment, in violation of Labor Code section 432.5

18 157. On information and belief, PLAINTIFF alleges that all of these practices were
19 experienced and continue to be experienced by other Aggrieved Employees.

20 158. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
21 not limited to injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

22 159. Under the provisions of PAGA and the following Labor Code sections, 201-203, 210,
23 216, 221-223, 226, 226.7, 227.3, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174,
24 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all relevant sections of the applicable
25 Wage Orders, as well as all interpretations of these laws by California Courts and administrative
26 bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for
27 all statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California
28 Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section

1 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor
2 Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover
3 civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
6 the Class Members and Aggrieved Employees:

- 7 1. For an order that the action be certified as a class action;
- 8 2. For an order that PLAINTIFF be appointed class representative;
- 9 3. For an order that counsel for PLAINTIFF be appointed class counsel;
- 10 4. For compensatory damages according to proof;
- 11 5. For liquidated damages according to proof;
- 12 6. For penalties according to proof;
- 13 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully
14 withheld from PLAINTIFF and the Class Members;
- 15 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
16 section 17200, et seq. of the California Business and Professions Code;
- 17 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 18 10. For pre-judgment interest as permitted by law;
- 19 11. For attorney's fees and costs reasonably incurred;
- 20 12. For civil penalties according to proof, including PAGA penalties (75% payable to the
21 LWDA and 25% payable to Aggrieved Employees; and
- 22 13. For such other and further relief that the Court deems just and proper.

23 Dated: October 17, 2022

CROSNER LEGAL, PC

24 By: 
25 Michael R. Crosner, Esq.
26 Zachary M. Crosner, Esq.
27 Jamie K. Serb, Esq.
28 Jonathan Stilz, Esq.
Attorneys for Plaintiff,
ANTOINETTE BROWN

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: October 17, 2022

CROSNER LEGAL, PC

By: 
Michael R. Crosner, Esq.
Zachary M. Crosner, Esq.
Jamie K. Serb, Esq.
Jonathan Stilz, Esq.
Attorneys for Plaintiff,
ANTOINETTE BROWN

EXHIBIT 1



Los Angeles Office
9440 Santa Monica Blvd.
Beverly Hills, CA 90210

Kiara Bramasco, Esq.
kiara@crosnerlegal.com
direct: (323) 205-7495
office: (310) 496-5818
fax: (310) 510-6429

August 10, 2022

VIA PAGA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAFilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Najdik Amirian
Agent for Service of Process for:
ELA Foods, Inc.
1451 Cordova Ave
Glendale, CA 91207

ELA Foods, Inc.
Attn: Human Resources/ Legal Department
1451 Cordova Ave
Glendale, CA 91207

Najdik Amiria
Agent for Service of Process for:
POP Foods Services, Inc.
1451 Cordova Ave
Glendale, CA 91207

ELA Foods, Inc.
Attn: Human Resources
456 West Stocker Street, Suite A
Glendale, CA 91202

ELA Foods, Inc.
Attn: Human Resources
39462 Trade Center Dr
Palmdale, CA 93551

POP Foods Services, Inc.
Attn: Human Resources/ Legal
Department
1451 Cordova Ave
Glendale, CA 91207

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; ELA Foods, Inc. and POP
Foods Services, Inc.
Date: August 10, 2022
Subject: *Antoinette Brown v. ELA Foods, Inc., et. al.*

Introduction

This office represents COMPLAINANT, Antoinette Brown (hereinafter “COMPLAINANT”) in connection with COMPLAINANT’s claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: ELA Foods, Inc. and POP Foods Services, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “EMPLOYER”). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by EMPLOYER in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of the actions taken to cure. If the alleged violation is not

cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which COMPLAINANT will base COMPLAINANT's claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT's intent to seek civil penalties against EMPLOYER.

COMPLAINANT, on behalf of COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties

for violations of the California Labor Code and applicable Wage Orders as to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of employer(s) who violated COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person who is an owner, director, officer, or managing agent of the employer.*" The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates or otherwise manages a fast-food restaurant chain, doing business as Popeyes Louisiana Kitchen, with over 2,700 restaurants in the U.S. and around the world,¹ including but not limited to at least 246 locations in California, including but not limited to, the restaurant facility located at 39462 Trade Center Dr. Palmdale, California, where EMPLOYER assigned COMPLAINANT to work. Although EMPLOYER may operate successful companies or have a noble mission, EMPLOYER does not comply with California's labor laws.

COMPLAINANT was employed by EMPLOYER as a non-exempt employee. COMPLAINANT worked for EMPLOYER as a manager, general manager, and/or similar title from in or around August 2021 through in or around mid-March 2022, when COMPLAINANT resigned from COMPLAINANT's employment. COMPLAINANT worked for EMPLOYER out of EMPLOYER's facility located at 39462 Trade Center Dr. in Palmdale, California. COMPLAINANT regularly worked at least seven and one half (7 1/2) hours per day, at least (5)

¹ See <https://www.popeyes.com/company> Last visited on August 6, 2022.

days per week. EMPLOYER paid COMPLAINANT an hourly rate for time counted by EMPLOYER as hours worked. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with non-discretionary remuneration, such as but not limited to, non-discretionary bonuses/incentive pay and/or other non-discretionary remuneration. For example, based on information and belief, EMPLOYER compensated COMPLAINANT with non-discretionary attendance bonuses and/or other non-discretionary compensation.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) conducted and continues to conduct illegal criminal and/or financial background checks as a condition of COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continues to fail to provide suitable seating; and (15) required and continues to require COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in

writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which all owed meal periods were provided each day.

Based on information and belief, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER’s time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER’s failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER’s control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, EMPLOYER further failed, and continues to fail, to record the true start and end times of COMPLAINANT’s and NON-EXEMPT AGGRIEVED EMPLOYEES’ meal periods.

Based on further information and belief, EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES’ work shifts.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER’s failure to keep “accurate and complete” payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor

Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, EMPLOYER fails to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, COMPLAINANT sent a request for payroll and personnel records to EMPLOYER. Yet, EMPLOYER failed to timely produce complete records within the time periods delineated by California labor law. Based on information and belief, EMPLOYER failed and continues to fail to timely produce complete payroll and personnel records when requested by other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

These violations subject EMPLOYER to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, COMPLAINANT did not sign a valid meal period waiver throughout COMPLAINANT's employment by EMPLOYER.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-

minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely. For example, COMPLAINANT regularly took her meal break after working more than five hours. On many days, COMPLAINANT was unable to take a meal break until after working more than seven hours and/or would have to wait until the end of her shift to take her meal break. At times, COMPLAINANT was required to assist customers and/or complete other work tasks while clocked out for what should have been off-duty meal periods. On information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also unable to take timely, uninterrupted thirty-minute meal periods due to the nature of their job, workload, and/or lack of relief workers.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to EMPLOYER's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet EMPLOYER's goals and expectations.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal periods. For example, at least three times per week, EMPLOYER required COMPLAINANT to remain onsite for the duration of her meal periods due to EMPLOYER's lack of adequate coverage for these shifts. Based on information and belief, EMPLOYER had a uniform policy and practice of requiring NON-EXEMPT AGGRIEVED EMPLOYEES to remain tethered to their worksites and/or otherwise on duty during unpaid meal periods. This time spent under EMPLOYER control was not compensated, resulting in the underpayment of minimum wages in addition to violations of California's meal period laws.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which EMPLOYER failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which were free of EMPLOYER's control owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per EMPLOYER's uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break. For example, when COMPLAINANT worked more than ten hours in a shift, COMPLAINANT was not provided with a second meal period.

Based on information and belief, despite EMPLOYER's failure to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of rounding the start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to EMPLOYER's premises), despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, EMPLOYER failed to keep accurate records of the true start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, EMPLOYER illegally rounded the start and end times of purported meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, EMPLOYER failed to instruct COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, EMPLOYER did not have a compliant written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each

Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³ EMPLOYER's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. See applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, EMPLOYER did not have a compliant written rest period policy, nor did EMPLOYER have any sort of compliant rest period policy in practice. For instance, EMPLOYER only provided COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with a single rest period per shift, even for shifts lasting longer than six (6) hours, and any purported rest periods were non-compliant. For example, COMPLAINANT and other NON-EXEMPT AGGRIEVED

³ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

EMPLOYEES were required to remain onsite during any rest periods and thus remained under EMPLOYER control during purportedly off-duty rest periods, in violation of California's rest period laws. Based on further information and belief, EMPLOYER failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area; instead, to the extent rest periods were provided, EMPLOYER limited COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, EMPLOYER failed to provide any form of a third rest period on shifts lasting longer than ten hours. For example, when COMPLAINANT worked shifts exceeding ten hours, COMPLAINANT was not provided with any third rest period.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted. For example, COMPLAINANT was often forced to work through her rest periods due to understaffing, the need to assist customers and/or complete other work tasks.

Furthermore, EMPLOYER failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” 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.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER’s automatic deduction and time rounding policies, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, EMPLOYER implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to EMPLOYER’s control during purported meal periods and/or were otherwise not afforded with lawful meal periods,

⁴ See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

depriving COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to EMPLOYER's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices. For example, on days COMPLAINANT opened her work location, COMPLAINANT was required to unlock the doors, turn on all the lights in the restaurant and deactivate the alarm before clocking in for work. This resulted in at least several minutes of uncompensated pre-shift work time each time she opened the facility. At the end of a shift, COMPLAINANT and/or the other NON-EXEMPT AGGRIEVED EMPLOYEES in charge of closing the location were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and then locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated.

Based on information and belief, EMPLOYER did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for time spent donning and doffing personal protective equipment and/or uniforms (e.g., rubber gloves, goggles, hairnets, hats, and/or face masks) during meal periods, rest periods, before the start of a scheduled shift, and after completing a scheduled shift. For example, prior to clocking in to work, NON-EXEMPT AGGRIEVED EMPLOYEES were required to walk to the back room and/or office to bestow any personal items and/or don uniforms and/or protective equipment before clocking in for their shifts.

Additionally, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other off-the-clock work for which they were not compensated. For example, EMPLOYER's fingerprint scanning system/electronic employee time-keeping system regularly malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to either reinitiate the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in consistent off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under EMPLOYER's control was not recorded and not compensated and resulted in unpaid minimum wages.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform other work outside of their scheduled shift times that was not compensated. For example, COMPLAINANT consistently received work-related calls and/or messages to her personal cell

phone/mobile device from other managers and/or supervisors before and/or after her scheduled shift times, including but not limited to, on purported days off, often resulting in at least several hours of off-the-clock work per pay period and the underpayment of minimum wages owed to COMPLAINANT. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES also were required to respond to work-related calls and/or messages outside of their scheduled shift times and/or perform other off-the-clock work, such as, but not limited to, running errands for EMPLOYER without being compensated for this time spent under EMPLOYER control, resulting in the underpayment of minimum wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

EMPLOYER's failure to pay for all time worked by virtue of its time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

⁵ See Lab. Code §1197.1(a) (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to EMPLOYER's premises and/or subject to EMPLOYER's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, EMPLOYER failed and continues to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay (e.g., non-discretionary attendance bonus pay), and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to unpaid meal periods that were restricted to EMPLOYER's premises) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

Based on information and belief, EMPLOYER failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, EMPLOYER failed to provide notice of sick leave amount balance left for COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and

employee was underpaid"); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure To Provide Supplemental Paid Sick Leave: Labor Code section 248.2 provides that all employers with 26 or more employees are required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related. Based on information and belief, EMPLOYER violated Labor Code section 248.2 by not providing NON-EXEMPT AGGRIEVED EMPLOYEES with required 2021 COVID-19 Supplemental Paid Sick Leave.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.⁷

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements EMPLOYER issued to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

EMPLOYER's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them.

⁷ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, EMPLOYER has violated California Labor Code § 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, EMPLOYER also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer. For example, wage statements EMPLOYER issued to COMPLAINANT identify "ELA Foods Inc" as the employer. However, documents in COMPLAINANT's personnel file, including but not limited to, EMPLOYER's 2810.5 Notice to Employee, safety rules, sexual harassment policy documents, among other policy documents and/or agreements, as well as various letterheads contained in COMPLAINANT's personnel file all identify the following entity as the employer: "Pop Food Services Inc."

Separately, based on information and belief, EMPLOYER issued wage statements to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a) by, including but not limited to, failing to list the accurate name of the employee on its issued wage statements. For example, COMPLAINANT's name is "Antoinette Brown," yet EMPLOYER's wage statements issued to COMPLAINANT list COMPLAINANT's name as "Antoinette *Brow*" (emphasis added).

As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁸

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by,

⁸ See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

including but not limited to, failing to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Failure to Provide Suitable Resting Facilities: Per Section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

EMPLOYER's restaurants/locations are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the restaurant wall, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not allowed to sit in the restaurant during working hours, including but not limited to, during rest periods, nor were they provided with a break room. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to suitable resting facilities under California law.

EMPLOYER's failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 5-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.1

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and/or EMPLOYER prohibited use of seats by NON-EXEMPT AGGRIEVED EMPLOYEES and use of seats would not interfere with the performance of their duties.

EMPLOYER's NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, EMPLOYER failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁹

Violation of California Labor Law Posting Requirements/Failure to Provide Employees with Notice of State Employment Laws: The Department of Industrial Relations requires employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. Section 22 of all applicable IWC Wage orders mandates an employer keep a copy of the applicable IWC Wage order posted in an area frequented by employees where it may be easily read during the workday. Labor Code section 207 requires an employer to post a Pay Day Notice specifying the regular paydays and the time and place of payment. Labor Code section 1102.8 requires employers provide notice of protections for workplace whistleblowers. Labor Code section 247 requires employers to provide notice to

⁹ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

employees of their rights with respect to paid sick leave, including but not limited to, Covid-19 Supplemental Sick Leave.

At all relevant times, EMPLOYER knowingly failed to post required state law employment notices and/or any posters/notices were outdated, including but not limited to, the applicable IWC Wage Order, the applicable minimum wage rate, pay date notice, sick leave pay rights, whistleblower protections, and/or other notices pertaining to wages, hours, and working conditions EMPLOYER was required to provide to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES yet failed to provide. For example, COMPLAINANT reports that EMPLOYER failed to maintain compliant labor law posters within the common areas of EMPLOYER's restaurant facility. EMPLOYER's continual and knowing failure to post required state law employment notices subjects EMPLOYER to substantial civil penalties under the Labor Code for each required notice it refused to post (see, e.g., California Labor Code, Article 1.5, Section 247(c)) - indicating that an employer who willfully violates the posting requirements is subject to a civil penalty of up to \$100 for each offense).

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, suitable seating, failure to post updated employee notices regarding employment rights, and business expenses, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, EMPLOYER had and continues to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER untimely provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates. For example, COMPLAINANT resigned from her employment, on or about March 16, 2022, but was not provided with any final paycheck until at least on or about March 24, 2022, and her final paycheck did not contain all wages owed, including but not limited to, all owed

minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.¹⁰

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, EMPLOYER shifted its costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for its business expenses, including but not limited to, uniforms and/or the

¹⁰ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

use of NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' personal mobile phone and data usage for work related purposes including but not limited to receiving and responding to work related messages and/or phone calls. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes and/or the cost of purchasing and/or maintaining work uniforms/clothing/protective gear (e.g., face masks). For example, COMPLAINANT consistently received calls and/or messages to her personal phone/mobile device from other managers and/or supervisors and/or coworkers for work-related purposes but was not reimbursed by EMPLOYER for these business expenses. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work related purposes.

Based on further information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES incurred expenses associated with being required to use their personal vehicles for work without receiving reimbursement from EMPLOYER for the costs they incurred in connection therewith. For example, EMPLOYER required COMPLAINANT at least once per month to use her personal vehicle to run errands (e.g., to the grocery store, hardware store) and/or travel between EMPLOYER's various locations to pick up and/or drop off items. EMPLOYER did not reimburse COMPLAINANT for the costs associated with using her personal vehicle for these business purposes, including but not limited to, for cost of gas, mileage, and/or wear and tear on the vehicle. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were/are also required to use their personal vehicles for work purposes without receiving any reimbursement from EMPLOYER and /or full reimbursement from EMPLOYER, including but not limited to, reimbursement for mileage at the applicable legally mandated Internal Revenue Service (IRS) per mile compensation rate.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out EMPLOYER's orders and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with

carrying out their duties required that COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.” Based on information and belief, EMPLOYER required COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limits on employers’ ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA. For example, based on information and belief, EMPLOYER conducted a background check on COMPLAINANT yet failed to provide a separate consent form with required disclosures due to, including but not limited to, the disclosure form not being a standalone document and/or the disclosures failing to be clear and/or conspicuous as required by law, due to, including but not limited to, embedded irrelevant state law disclosures in the purported FCRA disclosures.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.*, and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER violated Labor Code section 432.5.

Based on information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES agree in writing to unlawful provisions as a condition of employment, EMPLOYER violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act (“FEHA”), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to, IWC Wage Order 5, and all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210

Main: 310.496.5818
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink, reading "Kiara Bramasco". The signature is written in a cursive, flowing style.

Kiara Bramasco, Esq.
CROSNER LEGAL, PC

1 PROOF OF SERVICE
2 ANTOINETTE BROWN V. ELA FOODS INC. DBA POPEYES
3 Los Angeles Superior Court Case No. 22STCV26088

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On October 17, 2022, I served true copies of the following document(s) described as

8 **FIRST AMENDED CLASS ACTION COMPLAINT**

9 on the interested parties in this action as follows:

10 SEE ATTACHED SERVICE LIST

11 ☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
12 document(s) on the interested parties in this action by electronic transmission. Said electronic
13 transmission was reported as complete and without error.

14 ☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced
15 document(s) on the interested parties in this action by facsimile transmission from
16 (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine
17 and the transmission was reported as complete and without error.

18 ☒ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf
19 format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail
20 portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service
21 List as set forth herein. I caused an envelope containing the documents to be placed for collection
22 and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s
23 ordinary business practices. I am readily familiar with our business practices and the business
24 practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
25 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
26 course of business with the United States Postal Service, in a sealed envelope with postage fully
27 prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope,
28 with postage paid, and deposited with a a post office, mail box, sub-post office, substation, mail
chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal
Service or an affiliate thereof, at or near Phoenix, Arizona.

☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format
and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal
(letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth
herein. I caused an envelope containing the documents to be placed for collection and mailing and
to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream,
Inc.'s ordinary business practices. I am readily familiar with our business practices and the
business practices of Letterstream, Inc. for collecting and processing correspondence for mailing.
On the same day that correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or
delivered with any and all delivery fees to an authorized courier or driver authorized by the
express service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the

1 foregoing is true and correct and that I am employed in the office of a member of the bar of this
2 Court at whose direction the service was made.
3 Executed on October 17, 2022, at Los Angeles, California.
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Jessica Ball

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SERVICE LIST
ANTOINETTE BROWN V. ELA FOODS INC. DBA POPEYES
Los Angeles Superior Court Case No. 22STCV26088

Alicia A. Belock	Attorneys for Defendants
Michael J. O'Connor Jr.	Ela Foods Inc. DBA Popeyes
Sarkis A. Atoyan	VIA E-MAIL ONLY
ATKINSON, ANDELSON, LOYA,	
RUUD & ROMO	
4275 Executive Square, Suite 700	
La Jolla, CA 92037	
Ph# (858) 485-9526	
Fax (858) 485-9412	

Najdik Amiria	Via U.S. Mail Only
AGENT FOR SERVICE OF PROCESS	
1451 Cordova Ave.,	
Glendale, CA 91207	