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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

BEATRIZ QUINTERO DE
VAZQUEZ, individually, and on
behalf of other members of the
general public similarly situated, and
as an aggrieved employee pursuant to
the Private Attorneys General Act
("PAGA"),

Plaintiff,

vs.

TOMMY BAHAMA R&R
HOLDINGS, INC., a Delaware
corporation; TOMMY BAHAMA
GROUP, INC., a Delaware
corporation; TOMMY BAHAMA
BEVERAGES, LLC, a Delaware
limited liability company; OXFORD
INDUSTRIES, INC., doing business
in California as GEORGIA OXFORD
INDUSTRIES, INC., a Georgia
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2022-00041775-CU-OE-CTL

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Claim for Civil Penalties for Violations of California Labor Code, Pursuant to PAGA,

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- §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Beatriz Quintero De Vazquez, individually and on behalf of all other members
2 of the public similarly situated, and as an aggrieved employee and on behalf of and all other
3 aggrieved employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as a non-exempt,
9 hourly paid employee and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statutes under which this action is brought do not
17 specify any other basis for jurisdiction. Plaintiff’s share of civil penalties sought in this action
18 does not exceed \$75,000.

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

24 4. Venue is proper in this Court because Defendants employ or employed persons
25 within the County of San Diego and have violated the requirements of the California Labor
26 Code and applicable IWC Wage Order in this county which give rise to the penalties sought in
27 this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements
28 of the California Labor Code and applicable IWC Wage Order in at least one location within

1 the County of San Diego, including Defendants' restaurant located in San Diego (7007 Friars
2 Road, San Diego, California 92108). Pursuant to California Civil Code of Procedure section
3 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the
4 county in which the cause, or some part of the cause, arose. Because Defendants have
5 employees in San Diego County, and Plaintiff could bring this action to recover penalties in
6 San Diego County, venue is proper.

7 **THE PARTIES**

8 5. Plaintiff Quintero De Vazquez is a resident of Palm Desert, in Riverside
9 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
10 from approximately January 2018 to May 2022. Plaintiff worked as a Prep Cook at their
11 restaurant location in Palm Desert, California. During her employment, Plaintiff typically
12 worked eight (8) hours or more per day, and five (5) days or more per week. At the time
13 Plaintiff's employment with Defendants ended, she earned \$17.00 per hour. Her job duties
14 included, without limitation, preparing food items, washing dishes, and cleaning and
15 maintaining the kitchen.

16 6. TOMMY BAHAMA R&R HOLDINGS, INC. was and is, upon information
17 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county, the State of California.

19 7. TOMMY BAHAMA GROUP, INC. was and is, upon information and belief, a
20 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county, the State of California.

22 8. TOMMY BAHAMA BEVERAGES, LLC was and is, upon information and
23 belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
24 employer whose employees are engaged throughout this county, the State of California.

25 9. OXFORD INDUSTRIES, INC. (doing business in California as GEORGIA
26 OXFORD INDUSTRIES, INC.) was and is, upon information and belief, a Georgia
27 corporation, and at all times hereinafter mentioned, an employer whose employees are
28 engaged throughout this county, the State of California.

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

5 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of TOMMY BAHAMA R&R HOLDINGS,
7 INC.; TOMMY BAHAMA GROUP, INC.; TOMMY BAHAMA BEVERAGES, LLC; and
8 OXFORD INDUSTRIES, INC., at all relevant times.

9 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein was performed by, or is attributable to, TOMMY BAHAMA
11 R&R HOLDINGS, INC.; TOMMY BAHAMA GROUP, INC.; TOMMY BAHAMA
12 BEVERAGES, LLC; OXFORD INDUSTRIES, INC.; and/or DOES 1 through 10
13 (collectively, “Defendants” or “TOMMY BAHAMA”), each acting as the agent, employee,
14 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
15 and was acting within the course and scope of such agency, employment, joint venture, or
16 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
17 Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

25 15. Under California law, Defendants are jointly and severally liable as employers
26 for the violations alleged herein because they have each exercised sufficient control over the
27 wages, hours, working conditions, and employment status of Plaintiff and class members.
28 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and

1 controlled their work schedule and/or conditions of employment, determined their rate of pay,
2 and maintained their employment records. Defendants suffered or permitted Plaintiff and
3 class members to work and/or “engaged” Plaintiff and class members so as to create a
4 common-law employment relationship. As joint employers of Plaintiff and class members,
5 Defendants are jointly and severally liable for the civil penalties available to Plaintiff and
6 class members under the law.

7 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
8 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
9 members because Defendants have:

- 10 (a) jointly exercised meaningful control over the work performed by
11 Plaintiff and class members;
- 12 (b) jointly exercised meaningful control over Plaintiff’s and class members’
13 wages, hours, and working conditions, including the quantity, quality
14 standards, speed, scheduling, and operative details of the tasks
15 performed by Plaintiff and class members;
- 16 (c) jointly required that Plaintiff and class members perform work which is
17 an integral part of Defendants’ businesses; and
- 18 (d) jointly exercised control over Plaintiff and class members as a matter of
19 economic reality in that Plaintiff and class members were dependent on
20 Defendants, who shared the power to set the wages of Plaintiff and class
21 members and determined their working conditions, and who jointly
22 reaped the benefits from the underpayment of their wages and
23 noncompliance with other statutory provisions governing their
24 employment.

25 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 18. TOMMY BAHAMA R&R HOLDINGS, INC.; TOMMY BAHAMA GROUP,

INC.; TOMMY BAHAMA BEVERAGES, LLC; OXFORD INDUSTRIES, INC.; and/or
DOES 1 through 10 are therefore alter egos of each other.

19. Adherence to the fiction of the separate existence of Defendants would permit
an abuse of the corporate privilege, and would promote injustice by protecting Defendants
from liability for the wrongful acts committed by them under the name TOMMY BAHAMA.

20. Plaintiff further alleges, upon information and belief, that the Defendants
TOMMY BAHAMA R&R HOLDINGS, INC.; TOMMY BAHAMA GROUP, INC.;
TOMMY BAHAMA BEVERAGES, LLC; and OXFORD INDUSTRIES, INC. are alter egos
of each other for the following reasons:

- (a) On the California Secretary of State's website
(<https://bizfileonline.sos.ca.gov/>), TOMMY BAHAMA R&R
HOLDINGS, INC.; TOMMY BAHAMA GROUP, INC.; TOMMY
BAHAMA BEVERAGES, LLC; and OXFORD INDUSTRIES, INC.
(doing business in California as GEORGIA OXFORD INDUSTRIES,
INC.) have the same principal office address and mailing address, "999
PEACHTREE ST[REE]T, N.E., S[UI]TE 688 ATLANTA, GA 30309";
- (b) According to their most recent "Statement of Information" forms filed
with the California Secretary of State, TOMMY BAHAMA R&R
HOLDINGS, INC.; TOMMY BAHAMA GROUP, INC.; TOMMY
BAHAMA BEVERAGES, LLC; and/or OXFORD INDUSTRIES, INC.
(doing business in California as GEORGIA OXFORD INDUSTRIES,
INC.) share the same officers, managers, and/or members, including but
not limited to:
 - i. Thomas C Chubb III, who serves as CEO for OXFORD
INDUSTRIES, INC. and TOMMY BAHAMA R&R
HOLDINGS, INC.;
 - ii. Suraj Palakshappa, who serves as Secretary for OXFORD
INDUSTRIES, INC.; TOMMY BAHAMA R&R

HOLDINGS, INC.; TOMMY BAHAMA GROUP, INC.; and
TOMMY BAHAMA BEVERAGES, LLC; and
iii. Kenneth Scott Grassmyer, who serves as Chief Financial
Executive Officer of OXFORD INDUSTRIES, INC.;
TOMMY BAHAMA R&R HOLDINGS, INC.; and TOMMY
BAHAMA GROUP, INC.;

(c) According to the California Secretary of State’s website, TOMMY
BAHAMA R&R HOLDINGS, INC.; TOMMY BAHAMA GROUP,
INC.; TOMMY BAHAMA BEVERAGES, LLC, and OXFORD
INDUSTRIES, INC. (doing business in California as GEORGIA
OXFORD INDUSTRIES, INC.) share the same agent for service of
process, C T CORPORATION SYSTEM [(CO1688406)]; and

(d) On information and belief, TOMMY BAHAMA R&R HOLDINGS,
INC.; TOMMY BAHAMA GROUP, INC.; TOMMY BAHAMA
BEVERAGES, LLC; and OXFORD INDUSTRIES, INC. utilize the
same standardized employment forms and issue the same employment
policies.

GENERAL ALLEGATIONS

21. Defendants own and operate four (4) “Tommy Bahama Restaurants and Marlin
Bars” restaurant locations throughout Orange, Riverside, and San Diego counties in
California. Upon information and belief, Defendants maintain a single, centralized Human
Resources (HR) department at their corporate headquarters in Atlanta, Georgia, for all non-
exempt, hourly paid employees working for Defendants in California, which is responsible for
the recruiting and hiring of new employees, and communicating and implementing
Defendants’ company-wide policies, including timekeeping policies and meal and rest period
policies, to employees throughout California.

22. In particular, Plaintiff and class members, on information and belief, received
the same standardized documents and/or written policies. Upon information and belief, the

1 usage of standardized documents and/or written policies, including new-hire documents,
2 indicate that Defendants dictated policies at the corporate level and implemented them
3 company-wide, regardless of their employees' assigned locations or positions. Upon
4 information and belief, Defendants set forth uniform policies and procedures in several
5 documents provided at an employee's time of hire.

6 23. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their corporate headquarters in Atlanta, Georgia, which processes payroll for all
8 non-exempt, hourly paid employees working for Defendants at their various locations and
9 jobsites in California, including Plaintiff and class members. Based upon information and
10 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
11 employees in California, irrespective of their work locations. Upon information and belief,
12 Defendants process payroll for departing employees in the same manner throughout the State
13 of California, regardless of the manner in which each employee's employment ends.

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

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

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

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

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive at least minimum
28 wages for compensation and that they were not receiving at least minimum wages for work

1 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
2 and class members were not paid at least minimum wages for work done off-the-clock.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to meal periods in
5 accordance with the California Labor Code and applicable IWC Wage Order or payment of
6 one (1) additional hour of pay at their regular rates of pay when they were not provided with
7 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
8 were not provided with all meal periods or payment of one (1) additional hour of pay at their
9 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
10 period.

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

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

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

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of wages
3 during their employment. In violation of the California Labor Code, Plaintiff and class
4 members did not receive payment of all wages, including, but not limited to, overtime wages,
5 minimum wages, and/or meal and rest period premiums, within permissible time periods.

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

12 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they were prohibited from issuing instruments for the payment of
14 wages that were not payable in cash on demand, without discount and with authorization, but
15 did so, in violation of the California Labor Code.

16 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and/or class members were entitled to the portion of wages
18 previously paid and subsequently unlawfully deducted by Defendants.

19 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and/or class members were entitled to payment of wages as
21 designated by statute. In violation of the California Labor Code, Defendants secretly paid
22 Plaintiff and/or class members lower wages than required by statute while purporting to pay
23 them proper wages.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
26 were entitled to sit when it did not interfere with the performance of their duties and also have
27 seats nearby to use during a lull in tasks that do require moving about or standing. In
28 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to

1 provide Plaintiff and/or class members with suitable seating.

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

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

13 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 1 (a) The aggrieved employee shall give written notice by online filing
2 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
3 to the employer of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support
5 the alleged violations.
- 6 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be
8 accompanied by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
10 employer and the aggrieved employee by certified mail that it does not
11 intend to investigate the alleged violation within sixty (60) calendar
12 days of the postmark date of the Employee’s Notice. Upon receipt of
13 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
14 five (65) calendar days of the postmark date of the Employee’s Notice,
15 the aggrieved employee may commence a civil action pursuant to
16 California Labor Code section 2699 to recover civil penalties in addition
17 to any other penalties to which the employee may be entitled.

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

- 22 (a) The aggrieved employee or representative shall give written notice by
23 online filing to the LWDA and by certified mail to the employer of the
24 specific provisions of the California Labor Code alleged to have been
25 violated (other than those listed in Section 2699.5), including the facts
26 and theories to support the alleged violation.
- 27 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be

1 accompanied by a filing fee of seventy-five dollars (\$75).

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

10 46. On August 3, 2022, Plaintiff provided written notice by online filing to the
11 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including facts and theories to support the alleged
13 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
14 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
15 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
16 Plaintiff PAGA Case Number LWDA-CM-899470-22. A true and correct copy of Plaintiff's
17 written notice to the LWDA and Defendants dated August 3, 2022, is attached hereto as
18 "Exhibit 1."

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

22 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
23 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 212, 213, 223, 224, 226(a), 226.7,
25 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

26 49. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare

Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

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

55. Plaintiff’s proposed class consists of and is defined as follows:

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

56. Plaintiff’s proposed subclass consists of and is defined as follows:

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

4 57. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- 10 (a) Whether Defendants required Plaintiff and class members to work over
11 eight (8) hours per day, over twelve (12) hours per day, or over forty
12 (40) hours per week and failed to pay all legally required overtime
13 compensation to Plaintiff and class members;
- 14 (b) Whether Defendants failed to pay Plaintiff and class members at least
15 minimum wages for all hours worked;
- 16 (c) Whether Defendants failed to provide Plaintiff and class members meal
17 periods;
- 18 (d) Whether Defendants failed to authorize and permit Plaintiff and class
19 members to take rest periods;
- 20 (e) Whether Defendants provided Plaintiff and class members with
21 complete and accurate wage statements as required by California Labor
22 Code section 226(a);
- 23 (f) Whether Defendants maintained accurate payroll records as required by
24 California Labor Code section 1174(d);
- 25 (g) Whether Defendants failed to pay earned overtime wages, minimum
26 wages, and/or meal and rest period premiums due to Plaintiff and class
27 members upon their discharge;
- 28 (h) Whether Defendants failed to timely pay overtime wages, minimum

wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;

- (i) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and/or class members, in violation of California Labor Code sections 221 and 224;
- (j) Whether Defendants secretly paid Plaintiff and/or class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (k) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-

1 defined community of interest, and Plaintiff's claims (or defenses, if
2 any) are typical of all class members as demonstrated herein.

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

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

20 (e) Public Policy Considerations: Employers in the State of California
21 violate employment and labor laws every day. Current employees are
22 often afraid to assert their rights out of fear of direct or indirect
23 retaliation. Former employees are fearful of bringing actions because
24 they believe their former employers might damage their future
25 endeavors through negative references and/or other means. Class
26 actions provide the class members who are not named in the complaint
27 with a type of anonymity that allows for the vindication of their rights
28 while simultaneously protecting their privacy.

1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

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

6 62. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

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

15 64. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

20 65. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
22 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
23 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
24 employee, including nondiscretionary bonuses and incentive pay.

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

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 67. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 68. First, Defendants had, and continue to have, a company-wide policy and/or
9 practice requiring Plaintiff and class members to perform various work-related tasks while
10 off-the-clock after their shifts. For example, Plaintiff would clock out at the end of her shift,
11 but Defendants' managers required her to continue working before she could leave for the
12 day, completing tasks such as cooking rice or preparing dressings, in order to lighten the
13 workload for the incoming evening shift employees. Thus, Defendants failed to track all of
14 the time that employees spent performing work-related tasks outside of their shifts, and
15 Plaintiff and class members received no compensation for this time.

16 69. Second, Defendants had, and continue to have, a company-wide policy and/or
17 practice of understaffing their restaurant locations while assigning heavy workloads, including
18 completing daily Prep Cook checklists, resulting in a failure to provide Plaintiff and class
19 members with adequate meal period coverage. Also, Defendants have systematically, and on
20 a company-wide basis, understaffed their locations by adopting a single-staffing model for
21 some positions, such as Prep Cook employees working the weekend evening shift, thereby
22 failing to provide adequate meal period coverage to permit those employees to take compliant
23 meal periods. Defendants also had a company-wide practice of failing to schedule meal
24 periods, which further prevented Plaintiff and class members from being relieved of their
25 duties to take compliant meal periods. For example, Plaintiff worked through her meal periods
26 in order to attend to keep up with customer demand and complete her daily checklist. Because
27 Defendants did not employ or staff a sufficient number of employees to meet customer
28 demand, there was no one available to relieve employees needing meal period coverage, and

1 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
2 during shifts when they were entitled to receive a meal period. Consequently, Plaintiff and
3 class members were required to work through and/or had their unpaid meal periods interrupted
4 in order to complete their assigned duties and handle customer demand, time for which they
5 were not paid.

6 70. Further, on information and belief, because Defendants frowned upon
7 employees accruing meal period penalties, Defendants pressured Plaintiff and class members
8 to clock out for meal periods, on threat of discipline, even when they did not receive a
9 compliant meal period. Consequently, Plaintiff and class members performed work during
10 meal periods for which they were not paid. Moreover, Defendants' timekeeping system
11 prevented Plaintiff and class members from recording all hours worked when their meal
12 periods were shortened or interrupted, because the system locked out Plaintiff and class
13 members once they clocked out for a meal period, and would not permit them to clock back in
14 from a meal period until 30 minutes had elapsed. Thus, Defendants' timekeeping system
15 further prevented Plaintiff and class members from recording all hours worked when their
16 meal periods were shortened or interrupted.

17 71. Defendants knew or should have known that, as a result of these company-wide
18 practices and/or policies, Plaintiff and class members were performing their assigned duties
19 off-the-clock after their shifts and during meal periods, and were suffered or permitted to
20 perform work for which they were not paid. Because Plaintiff and class members worked
21 shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-
22 the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members
23 were not paid overtime wages for all of the overtime hours they actually worked.

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

SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

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

75. As stated above, during the relevant time period, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-clock, including after clocking out. Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

76. Additionally, as stated above, due to Defendants’ company-wide practices of understaffing and/or single-staffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

77. Moreover, as stated, on information and belief, in order to limit meal penalties that Defendants would otherwise owe, Defendants pressured Plaintiff and class members to clock out for meal periods under threat of discipline, even when they did not receive a compliant meal period. Furthermore, as set forth above, on information and belief, Defendants systematically failed to pay Plaintiff and class members for actual hours worked

1 during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and
2 class members for 30 minutes when they clocked out for a meal period.

3 78. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and class members. To the extent that these off-the-clock hours did not qualify for overtime
5 premium payment, Defendants did not pay at least minimum wages for those hours worked
6 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
7 1198.

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

12 **THIRD CAUSE OF ACTION**

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

14 **Violations**

15 **(Against all Defendants)**

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

18 81. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
20 class members' employment by Defendants.

21 82. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

28 83. At all relevant times herein set forth, California Labor Code sections 226.7,

1 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
2 meal period mandated by an applicable order of the IWC.

3 84. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
4 and the applicable IWC Wage Order also require employers to provide a second meal period
5 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
6 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
7 total hours worked is no more than twelve (12) hours, the second meal period may be waived
8 by mutual consent of the employer and the employee only if the first meal period was not
9 waived.

10 85. As stated above, Defendants had, and continue to have, company-wide policies
11 and/or practices of understaffing and/or single-staffing their restaurant locations, which,
12 combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack
13 of meal period coverage and prevented Plaintiff and class members from taking all timely,
14 uninterrupted meal periods to which they were entitled.

15 86. For example, according to Plaintiff's timesheets, on January 8, 2022, she
16 clocked in at the start of her shift at 8:02 a.m. and clocked out at the end of her shift at 5:13
17 p.m., working a total of 9 hours and 11 minutes (or 9.18 hours), without clocking out for a
18 meal period. As a further example, on November 20, 2021, Plaintiff clocked in at the start of
19 her shift at 8:04 a.m. and clocked out for her meal period at 3:50 p.m., working a total of
20 seven hours and 46 minutes (or 7.76 hours) before she was able to take her meal period, due to
21 the heavy workload and lack of coverage.

22 87. Additionally, as stated, because Defendants frowned upon employees accruing
23 meal period penalties, Defendants' management pressured Plaintiff and class members to
24 clock out for meal periods, on threat of discipline, regardless of whether they had received a
25 compliant meal period, in order to strictly limit meal penalties that would need to be paid by
26 Defendants. For example, Plaintiff was sometimes required to clock out for her meal period
27 to record that she had received compliant meal periods on shifts when she had not, in fact,
28 received these timely meal periods.

1 88. Furthermore, as stated, Defendants’ company-wide timekeeping system
2 prevented Plaintiff and class members from recording when their meal periods were shortened
3 or interrupted, because the system locked out Plaintiff and class members once they clocked
4 out for a meal period, and would not permit them to clock back in from a meal period before
5 30 minutes had elapsed. For example, Plaintiff’s meal periods were sometimes interrupted or
6 cut short in order to assist her coworkers and keep up with customer demand.

7 89. Moreover, Defendants did not provide Plaintiff and class members with second
8 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
9 During her employment, Plaintiff worked in excess of ten (10) or more hours per day, but was
10 never provided a second 30-minute meal period. For example, according to Plaintiff’s
11 timesheets, she worked shifts in excess of ten or more hours per day on November 4, 2021;
12 November 11, 2021; November 18, 2021; November 24, 2021; February 11, 2022; March 26,
13 2022; March 31, 2022; and April 2, 2022, but was not provided a second 30-minute meal
14 period on those days. Plaintiff and class members did not sign valid meal period waivers on
15 days that they were entitled to meal periods and were not relieved of all duties.

16 90. At all times mentioned herein, Defendants knew or should have known that as a
17 result of their policies, Plaintiff and class members were not actually relieved of all duties to
18 take timely, uninterrupted meal periods. Defendants further knew or should have known that
19 they did not pay Plaintiff and class members meal period premiums when meal periods were
20 late, interrupted, shortened, and/or missed.

21 91. Furthermore, Defendants engaged in a company-wide practice and/or policy of
22 not paying all meal period premiums owed when compliant meal periods are not provided.
23 Because of this practice and/or policy, Plaintiff and class members have not received premium
24 pay for missed, late, and interrupted meal periods.

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

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

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

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

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

96. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

97. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or

1 practices of understaffing and/or single-staffing, and assignment of heavy workloads
2 prevented Plaintiff and class members from being relieved of all duty in order to take their rest
3 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants'
4 failure to provide adequate rest period coverage, further led to Plaintiff and class members not
5 being authorized and permitted to take compliant rest periods.

6 98. Furthermore, upon information and belief, Defendants maintained a company-
7 wide on-premises rest period policy, which effectively required that Plaintiff and class
8 members remain on or near the work premises during their rest periods. Because Plaintiff and
9 class members were restricted from leaving the premises during rest periods, they were denied
10 the ability to use their rest periods freely for their own purposes, such as running personal
11 errands. Thus, Defendants effectively maintained control over Plaintiff and class members
12 during rest periods.

13 99. As a result of Defendants' practices and policies, Plaintiff and class members
14 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
15 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
16 throughout her employment, Plaintiff had to forego her rest periods because the restaurant was
17 busy, did not have coverage, and there was an expectation for all employees to work through
18 their rest periods. When Plaintiff was finally able to take her rest periods, they were
19 interrupted because she was required to keep up with the customer demand and complete her
20 daily Prep Cook checklist.

21 100. Defendants have also engaged in a systematic, company-wide practice and/or
22 policy of not paying rest period premiums owed when rest periods are not authorized and
23 permitted. Because of this practice and/or policy, Plaintiff and class members have not
24 received premium pay for all missed rest periods.

25 101. Accordingly, Defendants failed to authorize and permit all compliant rest
26 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
27 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
28 Plaintiff and class members are therefore entitled to recover from Defendants one (1)

1 additional hour of pay at the employee's regular rate of compensation for each work day that a
2 compliant rest period was not authorized and permitted.

3 **FIFTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 5 **Statements and Failure to Maintain Accurate Payroll Records** 6 **(Against all Defendants)**

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

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

14 104. During the relevant time period, Defendants have knowingly and intentionally
15 provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage
16 statements. For example, Defendants issued uniform wage statements to Plaintiff and
17 Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages
18 earned; the address of the legal entity that is the employer; and all applicable hourly rates in
19 effect during the pay period, including rates of pay for overtime wages, and the corresponding
20 number of hours worked at each hourly rate. Specifically, Defendants violated sections
21 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

22 105. Because Defendants did not record the time Plaintiff and Subclass members
23 spent working off-the-clock and deducted time from their records for meal periods that were
24 interrupted and/or missed (and therefore time for which they should have been paid),
25 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
26 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
27 respectively. For the same reason, Defendants failed to accurately list the total number of
28 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed

1 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
2 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

3 106. Additionally, and separate from these violations, Defendants issued uniform
4 wage statements to Plaintiff and Subclass members that failed to correctly list the address of
5 the legal entity of the actual employer in violation of 226(a)(8). The purpose of section
6 226(a)(8) is to provide California employees with transparency as to the true identity of their
7 employer, to allow the employee to contact their employer during employment or in the future
8 for various reasons, including filing an administrative claim, judicial claim, or other action to
9 seek relief against their employer, to obtain unemployment benefits, etc. This includes
10 providing employees with a physical address of the employer. Plaintiff's and Subclass
11 members' wage statements incorrectly list the employer's address as "400 FAIRVIEW AVE
12 N STE #488 SEATTLE, WA 98109," but, according to the California Secretary of State's
13 website, Defendants' entity address should be "999 PEACHTREE STREET, N.E., STE. 688
14 ATLANTA, GA 30309."

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

23 108. California Labor Code section 1174(d) provides that "[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
2 civil penalty if they fail to maintain accurate and complete records as required by section
3 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
5 members showing the daily hours they worked and the wages paid thereto as a result of failing
6 to record the off-the-clock hours that they worked.

7 109. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. During the relevant time
14 period, Defendants engaged in company-wide practices and/or policies of failing to record
15 actual hours worked, and thereby failed to keep accurate records of work period and meal
16 period start and stop times for Plaintiff and Subclass members, in violation of section 1198.
17 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
18 second 30-minute meal periods to which they were entitled, Defendants kept no records of
19 meal start and end times for second meal periods.

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

24 **SIXTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 26 **Termination** 27 **(Against all Defendants)**

28 111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

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

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

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

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
25 **Employment**
26 **(Against all Defendants)**

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

122. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 123. At all times herein set forth, California Labor Code section 2802 provides that
3 an employer must reimburse employees for all necessary expenditures and losses incurred by
4 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
5 to prevent employers from passing off their cost of doing business and operating expenses on
6 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
7 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen
8 tools or equipment are required by the employer or are necessary to the performance of a job,
9 such tools and equipment shall be provided and maintained by the employer, except that an
10 employee whose wages are at least two (2) times the minimum wage provided herein may be
11 required to provide and maintain hand tools and equipment customarily required by the trade
12 or craft.”

13 124. During the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiff and class members to purchase tools, supplies, and/or equipment that
15 were necessary for the completion of their work-related duties. For example, during her
16 employment, Plaintiff spent about \$15 to purchase a vegetable peeler, lemon squeezer, and
17 measuring cup because Defendants failed to provide her with these necessary tools, supplies,
18 and/or equipment which were required for the restaurant to operate properly and/or meet
19 management’s expectations. Although Defendants required Plaintiff and class members to
20 purchase and use their own tools, supplies, and/or equipment in the performance of their
21 duties, they did not reimburse them for these expenses.

22 125. Defendants could have provided Plaintiff and class members with the actual
23 tools, supplies, and/or equipment for use on the job. Or, Defendants could have reimbursed
24 employees for the costs of their tools, supplies, and/or equipment expenses. Instead,
25 Defendants passed these operating costs off onto Plaintiff and class members. At all relevant
26 times, Plaintiff did not earn at least two (2) times the minimum wage.

27 126. Defendants’ company-wide policy and/or practice of not reimbursing
28 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff

1 and class members violates California Labor Code section 2802. Plaintiff and class members
2 are entitled to recover from Defendants their business-related expenses incurred during the
3 course and scope of their employment, plus interest.

4 **NINTH CAUSE OF ACTION**

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

6 **(Against all Defendants)**

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

9 128. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
10 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
11 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
12 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor
13 Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
14 penalties for violations of those Labor Code sections not found in section 2699.5, including
15 sections 516 and 1182.12.

16 129. Defendants’ conduct, as alleged herein, violates numerous sections of the
17 California Labor Code, including, but not limited to, the following:

- 18 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
19 Wage Order for Defendants’ failure to compensate Plaintiff and other
20 aggrieved employees with all required overtime pay, as alleged herein;
- 21 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
22 the applicable IWC Wage Order for Defendants’ failure to compensate
23 Plaintiff and other aggrieved employees with at least minimum wages
24 for all hours worked, as alleged herein;
- 25 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
26 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
27 and other aggrieved employees with meal periods, as alleged herein;;
- 28 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiff and other aggrieved employees to take rest periods, as
3 alleged herein;

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

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

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

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

14 (i) Violation of Labor Code sections 212 and 213 for issuing instruments
15 for the payment of wages that were not payable in cash on demand,
16 without discount, and with prior authorization, as set forth below;

17 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting
18 a portion of wages previously paid to other aggrieved employees, as set
19 forth below;

20 (k) Violation of Labor Code section 223 for secretly paying other aggrieved
21 employees lower wages than required by statute, while purporting to
22 pay the proper wages, as set forth below;

23 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
24 Order for failing to provide suitable seating to other aggrieved
25 employees, as set forth below; and

26 (m) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
27 and other aggrieved employees for all business expenses necessarily
28 incurred, as alleged herein.

130. At all relevant times herein set forth, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

131. In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

. . . (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

132. Further, the DLSE notes that the Labor Code manifests:

1 . . . [A] strong public policy that prohibits an employer (or its agent) from
2 imposing conditions or obstacles which interfere with or prevent an
3 employee's (sic) from promptly receiving their due wages in *full*. The
4 imposition of a fee in order to readily *access* one's earned and paid wages
5 under a payroll card program which is designed to discharge the
6 employer's wage payment obligations could impermissibly interfere with
an employee's receipt of paid wages by creating a financial condition
which would have the *effect* of reducing or discounting wages because
such fee would be charged against the same account in which wages are
deposited. (emphases in original)

7 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
8 providers "effectively act as agents of the client employers in discharging the employer's
9 wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the
10 Labor Code does not purport to regulate the specific arrangements between employers and
11 payroll service providers, both an employer and, under the express language in Labor Code
12 § 212- their *agent*, must comply with its requirements." *DLSE opinion letter* 2008.07.07-2.

13 133. During the relevant time period, Defendants had an agreement with a payroll
14 service provider for the issuance of payroll cards to employees, including other aggrieved
15 employees, to discharge their wage payment obligations to their employees. Under
16 Defendants' payroll debit card program, on information and belief, other aggrieved employees
17 did not have easy access to the entirety of their wages without incurring a fee. For example,
18 other aggrieved employees were unable to withdraw their entire wages in at least one
19 transaction without incurring a fee, which resulted in a discount in their pay. Thus,
20 Defendants' payroll debit card program was and continues to be unlawful as it did not give
21 other aggrieved employees to access their entire wages without discount and without delay.

22 134. California courts recognize a policy favoring the full and prompt payment of
23 wages to employees. Defendants' payroll card program is inconsistent with this policy
24 because it presents a number of obstacles and hurdles that, together, make it difficult for other
25 aggrieved employees to access their entire wages without discount and without delay, in
26 violation of California Labor Code sections 212 and 213. Other aggrieved employees are
27 therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or
28 2699(a), (f), and (g).

1 135. At all relevant times herein, California Labor Code section 221 provides that it
2 shall be unlawful for any employer to collect or receive from an employee any part of wages
3 theretofore paid by said employer to said employee. California Labor Code section 224 also
4 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
5 deduction is expressly authorized in writing by the employee."

6 136. During the relevant time period, Defendants unlawfully deducted a portion of
7 wages previously paid to other aggrieved employees in violation of California Labor Code
8 section 221. On information and belief, Defendants systematically, and on a company-wide
9 basis, provided other aggrieved employees with payroll debit cards as payment of their wages.
10 Under Defendants' payroll debit card program, other aggrieved employees were assessed
11 various fees in connection with their use of the payroll debit cards. For example, other
12 aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to
13 obtain and/or spend their earned and due wages. The fees charged to other aggrieved
14 employees resulted in a discount of their wages.

15 137. Defendants' payroll debit card program, which resulted in a discount of wages
16 to employees, are tantamount to taking deductions from other aggrieved employees'
17 paychecks without their written authorization and therefore constitutes an unlawful deduction
18 of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are
19 therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or
20 2699(a), (f), and (g).

21 138. At all relevant times herein, California Labor Code section 223 makes it
22 unlawful for an employer to secretly pay wages lower than required by statute while
23 purporting to pay legal wages.

24 139. During the relevant time period, Defendants willfully and systematically issued
25 payroll debit cards to other aggrieved employees that discounted their wages by charging
26 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
27 card program resulted in the payment of less than statutorily required wages to other
28 aggrieved employees. Thus, Defendants paid other aggrieved employees lower wages than

1 those they were entitled to while purporting that other aggrieved employees were properly
2 paid.

3 140. Defendants' failure to pay other aggrieved employees the correct designated
4 wages, while purporting to pay legal wages, is a violation of California Labor Code section
5 223. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to
6 Labor Code sections 225.5 and/or 2699(a), (f), and (g).

7 141. At all relevant times herein, California Labor Code section 1198 makes it
8 illegal to employ an employee under conditions of labor that are prohibited by the applicable
9 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
10 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
11 The employment of any employee . . . under conditions of labor prohibited by the order is
12 unlawful.”

13 142. California Code of Regulations, Title 8, section 11050(14)(A) provides that
14 “[a]ll working employees shall be provided with suitable seats when the nature of the work
15 reasonably permits the use of seats.”

16 143. Defendants' California restaurants are generally similar in their layout and
17 design and there was, and continues to be, space behind host stands to allow for the presence
18 and use of a seat or stool by other aggrieved employees (with reasonable or no modification to
19 these work areas) during the performance of their work duties. Defendants could have
20 provided other aggrieved employees with a seat or stool at their host stands, but instead denied
21 them seating and forced other aggrieved employees to stand throughout the day.

22 144. Other aggrieved employees spent a portion substantial portion of their day
23 behind or at these host stands. The nature of the work of an employee performing cashier
24 duties can reasonably be accomplished from a seated position. However, Defendants
25 systematically, and on a company-wide basis, do not provide seats or stools at or near the host
26 stands, forcing other aggrieved employees to stand throughout their work shifts.

27 145. Defendants violated California Labor Code section 1198 and California Code
28 of Regulations, Title 8, section 11050(14)(A), because other aggrieved employees were not

1 allowed to sit, even when it would not have interfered with the performance of their duties,
2 nor were they provided with suitable seats. Defendants' management did not inform other
3 aggrieved employees that they were allowed to sit down, provide any means for them to sit
4 down, or mention any policy regarding sitting.

5 146. As a result of Defendants' company-wide policy and/or practice of prohibiting
6 employees from sitting during their shifts and company-wide failure to provide suitable
7 seating, other aggrieved employees were forced to stand during shifts and denied seats.
8 Defendants' failure to provide suitable seating to other aggrieved employees violated and
9 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,
10 subdivision 14(A). Other aggrieved employees are therefore entitled to recover civil penalties
11 pursuant to Labor Code sections 2699(a), (f), and (g).

12 147. At all relevant times herein, California Labor Code section 1198 makes it
13 illegal to employ an employee under conditions of labor that are prohibited by the applicable
14 IWC Wage Order. California Labor Code section 1198 requires that ". . . the standard
15 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
16 employees. The employment of any employee . . . under conditions of labor prohibited by the
17 order is unlawful."

18 148. California Code of Regulations, Title 8, section 11050 subdivision 14(B)
19 provides that "[w]hen employees are not engaged in the active duties of their employment and
20 the nature of the work requires standing, an adequate number of suitable seats shall be placed
21 in reasonable proximity to the work area and employees shall be permitted to use such seats
22 when it does not interfere with the performance of their duties."

23 149. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
25 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were
26 they provided with suitable seats in reasonable proximity to their work areas.

27 150. Defendants' California restaurants are generally similar in their layout and
28 design and there was, and continues to be, space near their work areas (with reasonable or no

1 modification to these work areas) to allow for the presence and use of a seat or stool by other
2 aggrieved employees during lulls in operation. Defendants could have provided other
3 aggrieved employees with a seat or stool in their work areas, but instead denied other
4 aggrieved employees suitable seating altogether and effectively forced other aggrieved
5 employees to stand throughout the day.

6 151. Defendants did not provide other aggrieved employees with seats or stools in
7 reasonable proximity to their work areas to allow them to use seats when it would not interfere
8 with the performance of their duties for times when they were not engaged in active duties
9 that require standing. In other words, to the extent other aggrieved employees engaged in
10 duties in which the nature of the work required standing, Defendants denied them the use of
11 seats nearby during lulls in their work duties. Moreover, Defendants did not inform other
12 aggrieved employees of their rights to a seat or stool under California law.

13 152. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting at any time, even when they were not engaged in active duties
15 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
16 work areas, other aggrieved employees were forced to stand during shifts and denied seats.
17 Defendants' failure to provide suitable seating to other aggrieved employees violated and
18 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,
19 subdivision 14(B). Other aggrieved employees are therefore entitled to recover civil penalties
20 pursuant to Labor Code sections 2699(a), (f), and (g).

21 **TENTH CAUSE OF ACTION**

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

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

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

27 154. Defendants are "persons" as defined by California Business & Professions
28 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

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

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

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

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
14 class members, to work overtime without paying them proper
15 compensation in violation of California Labor Code sections 510 and
16 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (b) Failing to pay at least minimum wage to Plaintiff and class members in
18 violation of California Labor Code sections 1182.12, 1194, 1197,
19 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
20 herein;
- 21 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
22 members in violation of California Labor Code sections 226.7, 512(a),
23 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 24 (d) Failing to authorize and permit Plaintiff and class members to take
25 uninterrupted rest periods in violation of California Labor Code sections
26 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
27 herein;
- 28 (e) Failing to provide Plaintiff and class members with accurate wage

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

162. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
2 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
3 seeks to enforce important rights affecting the public interest within the meaning of Code of
4 Civil Procedure section 1021.5.

5 163. Defendants' activities, namely Defendants' company-wide practice and/or
6 policy of not paying Plaintiff and class members all meal and rest period premiums due to
7 them under Labor Code section 226.7, deprived Plaintiff and class members of the
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The
9 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
10 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
11 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
12 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
13 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
14 unfair business practice in violation of California Business & Professions Code sections
15 17200, *et seq.* (*Id.*)

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

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

27 **REQUEST FOR JURY TRIAL**

28 Plaintiff requests a trial by jury.

1 **PRAYER FOR RELIEF**

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

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

7 **Class Certification**

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

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

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

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

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

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

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

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

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

23 **As to the Second Cause of Action**

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

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

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

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

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

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

8 **As to the Third Cause of Action**

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

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

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

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

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

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

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

24 **As to the Fourth Cause of Action**

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

28 24. That the Court make an award to the Plaintiff and class members of one (1) hour

of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

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

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

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

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

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

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

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

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

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

As to the Sixth Cause of Action

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

1 Plaintiff and other terminated class members;

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

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

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

8 40. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

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

12 **As to the Seventh Cause of Action**

13 42. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
15 overtime wages, minimum wages, and/or meal and rest period premiums during their
16 employment;

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

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

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

23 46. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

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

27 **As to the Eighth Cause of Action**

28 48. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
2 related expenses and costs incurred by Plaintiff and class members;

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

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

7 51. For all actual, consequential, and incidental losses and damages, according to
8 proof;

9 52. For attorneys' fees and costs pursuant to California Labor Code section
10 2802(c), or as otherwise provided by law; and

11 53. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 54. That the Court declare, adjudge and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
16 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
17 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
18 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
19 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
20 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
21 earned wages upon termination); 204 (by failing to timely pay all earned wages during
22 employment); 212 and 213 (by failing to make earned wages accessible without discount);
23 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying
24 wages lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to
25 provide suitable seating); and 2802 (by failing to reimburse business expenses);

26 55. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
27 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
28 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,

1194, 1197, 1197.1, 1198, and 2802;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

As to the Tenth Cause of Action

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

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

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

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

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

appropriate.

As to the Eleventh Cause of Action

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

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

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

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

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

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

Dated: October 13, 2022

Respectfully submitted,

Capstone Law APC

By: 

Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Beatriz Quintero De Vazquez

EXHIBIT “1”

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

August 3, 2022

VIA ONLINE SUBMISSION

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

Subject: *Beatriz Quintero De Vazquez v. Tommy Bahama R&R Holdings, Inc., et al.*

Dear PAGA Administrator:

This office represents Beatriz Quintero De Vazquez in connection with her claims under the California Labor Code. Ms. Quintero De Vazquez was an employee of TOMMY BAHAMA R&R HOLDINGS, INC.; TOMMY BAHAMA BEVERAGES, LLC; TOMMY BAHAMA GROUP, INC.; and/or OXFORD INDUSTRIES, INC. For the purposes of this letter, Ms. Quintero De Vazquez collectively refers to these entities as “TOMMY BAHAMA.”

The employers may be contacted directly at the addresses below:

TOMMY BAHAMA R&R HOLDINGS, INC.
999 PEACHTREE STREET, N.E., STE. 688
ATLANTA, GA 30309

TOMMY BAHAMA GROUP, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

TOMMY BAHAMA BEVERAGES, LLC
999 PEACHTREE ST., NE, SUITE 688
ATLANTA, GA 30309

OXFORD INDUSTRIES, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

Ms. Quintero De Vazquez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Quintero De Vazquez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by TOMMY BAHAMA as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TOMMY BAHAMA employed Ms. Quintero De Vazquez as an hourly paid, non-exempt employee from approximately January 2018 to May 2022. Ms. Quintero De Vazquez worked for TOMMY BAHAMA as a Prep Cook at its Tommy Bahama restaurant location in Palm Desert, California.

During her employment, Ms. Quintero De Vazquez typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Ms. Quintero De Vazquez's employment with TOMMY BAHAMA ended, she earned \$17.00 per hour. Her job duties included, without limitation, preparing food items, washing dishes, and cleaning and maintaining the kitchen.

TOMMY BAHAMA committed one or more of the following Labor Code violations against Ms. Quintero De Vazquez, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

TOMMY BAHAMA's Company-Wide and Uniform Payroll and HR Practices

TOMMY BAHAMA R&R HOLDINGS, INC. and TOMMY BAHAMA GROUP, INC. are Delaware corporations, while TOMMY BAHAMA BEVERAGES, LLC is a Delaware limited liability company, and OXFORD INDUSTRIES, INC. is a Georgia corporation. Together, they own and operate approximately four (4) "Tommy Bahama Restaurants and Marlin Bars" restaurant locations throughout Orange, Riverside, and San Diego counties in California. Upon information and belief, TOMMY BAHAMA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for TOMMY BAHAMA in California, including Ms. Quintero De Vazquez and other aggrieved employees. At all relevant times, TOMMY BAHAMA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Quintero De Vazquez and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in

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

a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TOMMY BAHAMA willfully failed to pay all overtime wages owed to Ms. Quintero De Vazquez and other aggrieved employees. During the relevant time period, Ms. Quintero De Vazquez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TOMMY BAHAMA had, and continues to have, a company-wide policy and/or practice of requiring Ms. Quintero De Vazquez and other aggrieved employees to perform tasks off-the-clock after their shifts. For example, at least once per week, Ms. Quintero De Vazquez would clock out at the end of her shift, but TOMMY BAHAMA's managers required her to continue working before she could leave for the day, completing tasks such as cooking rice or preparing dressings, in order to lighten the workload for the incoming evening shift employees. This off-the-clock work could take up to 20 minutes per instance. Thus, TOMMY BAHAMA failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. Quintero De Vazquez and other aggrieved employees received no compensation for this time.

Second, TOMMY BAHAMA had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, including completing daily Prep Cook checklists, resulting in a failure to provide Ms. Quintero De Vazquez and other aggrieved employees with adequate meal period coverage. Also, TOMMY BAHAMA has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some positions, such as Prep Cook employees working the weekend evening shift, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. TOMMY BAHAMA also had a practice of failing to schedule meal periods, which further caused Ms. Quintero De Vazquez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Quintero De Vazquez worked through her meal periods approximately four times per week in order to keep up with customer demand and complete her daily checklist. Because TOMMY BAHAMA did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Quintero De Vazquez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Quintero De Vazquez and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Further, on information and belief, because TOMMY BAHAMA frowned upon employees accruing meal period penalties, TOMMY BAHAMA pressured Ms. Quintero De Vazquez and other aggrieved employees to clock out for meal periods, on threat of discipline, even when they did not receive a compliant meal period. Consequently, Ms. Quintero De Vazquez and other aggrieved employees performed work during meal periods for which they were not paid. Moreover, TOMMY BAHAMA's timekeeping system prevented Ms. Quintero De Vazquez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Quintero De Vazquez and other aggrieved employees once they

clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, TOMMY BAHAMA's timekeeping system further prevented Ms. Quintero De Vazquez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

TOMMY BAHAMA knew or should have known that as a result of these company-wide practices and/or policies, Ms. Quintero De Vazquez and other aggrieved employees were performing assigned duties off-the-clock after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Quintero De Vazquez and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

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

TOMMY BAHAMA's failure to pay Ms. Quintero De Vazquez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Quintero De Vazquez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, TOMMY BAHAMA had a company-wide policy and/or practice requiring Ms. Quintero De Vazquez and other aggrieved employees to perform various work-related tasks while off-the-clock, including after clocking out. TOMMY BAHAMA failed to track this time Ms. Quintero De Vazquez and other aggrieved employees spent working off-the-clock, and Ms. Quintero De Vazquez and other aggrieved employees received no compensation for this time.

Additionally, as stated above, due to TOMMY BAHAMA's company-wide practices of understaffing and/or single-staffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Quintero De Vazquez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

Moreover, as stated, on information and belief, in order to limit meal penalties that TOMMY BAHAMA would otherwise owe, TOMMY BAHAMA pressured Ms. Quintero De Vazquez and other aggrieved employees to clock out for meal periods, under threat of discipline, even when they did not receive a compliant meal period. Furthermore, as set forth above, on information and belief, TOMMY BAHAMA systematically failed to pay Ms. Quintero De Vazquez and other aggrieved employees for actual hours worked during unpaid meal periods, because TOMMY BAHAMA's timekeeping system locked out Ms. Quintero De Vazquez and other aggrieved employees for 30 minutes when they clocked out for a meal period.

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

Accordingly, TOMMY BAHAMA regularly failed to pay at least minimum wages to Ms. Quintero De Vazquez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Quintero De Vazquez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

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

As stated above, TOMMY BAHAMA had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing its locations, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Quintero De Vazquez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

For example, according to Ms. Quintero De Vazquez's timesheets, on January 8, 2022, she clocked in at the start of her shift at 8:02 a.m. and clocked out at the end of her shift at 5:13 p.m., working a total 9 hours and 11 minutes (or 9.18 hours), without clocking out for a meal period. As a further example, on November 20, 2021, Ms. Quintero De Vazquez clocked in at the start of her shift at 8:04 a.m. and clocked out for her meal period at 3:50 p.m., working a total seven hours and 46 minutes (or 7.76 hours) before she was able to take her meal period, due to the heavy workload and lack of coverage.

Additionally, as stated, because TOMMY BAHAMA frowned upon employees accruing meal period penalties, TOMMY BAHAMA's management pressured Ms. Quintero De Vazquez and other aggrieved employees to clock out for meal periods, on threat of discipline, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by TOMMY BAHAMA. For example, Ms. Quintero De Vazquez was required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods.

Furthermore, as stated, TOMMY BAHAMA's company-wide timekeeping system prevented Ms. Quintero De Vazquez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. Quintero De Vazquez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Ms. Quintero De Vazquez's meal periods were sometimes interrupted or cut short in order to assist her coworkers and keep up with customer demand.

Moreover, TOMMY BAHAMA did not provide Ms. Quintero De Vazquez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Quintero De Vazquez worked in excess of ten (10) or more hours per day, but was never provided a second 30-minute meal period. For example, according to Ms. Quintero De Vazquez's timesheets, she worked shifts in excess of ten or more hours per day on November 4, 2021; November 11, 2021; November 18, 2021; November 24, 2021; February 11, 2022; March 26, 2022; March 31, 2022; and April 2, 2022, but was not provided a second 30-minute meal period on those days. Ms. Quintero De Vazquez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

During the relevant time period, TOMMY BAHAMA regularly failed to authorize and permit Ms. Quintero De Vazquez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TOMMY BAHAMA's company-wide practices of understaffing and/or single-staffing and assignment of heavy workloads, resulted in a lack of rest period coverage and prevented Ms. Quintero De Vazquez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, TOMMY BAHAMA also failed to schedule rest periods, which, coupled with TOMMY BAHAMA's failure to provide adequate rest period coverage, further led to Ms. Quintero De Vazquez and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result, Ms. Quintero De Vazquez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout her

employment, Ms. Quintero De Vazquez had to forego her rest periods almost entirely because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods. When Ms. Quintero De Vazquez was finally able to take her rest periods, they were often interrupted because she was required to keep up with customer demand and complete her daily Prep Cook checklist.

TOMMY BAHAMA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Quintero De Vazquez and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that TOMMY BAHAMA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TOMMY BAHAMA did not pay other aggrieved employees at the correct rate of pay for premiums because TOMMY BAHAMA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

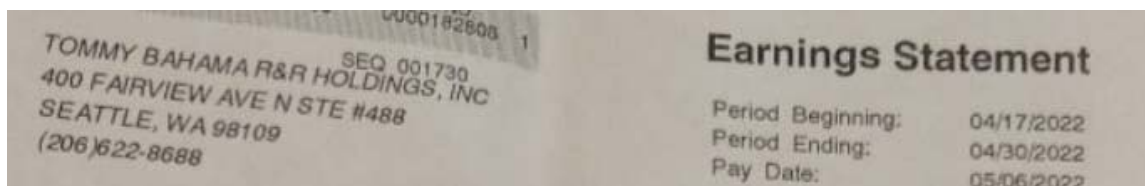
During the relevant time period, TOMMY BAHAMA has knowingly and intentionally provided Ms. Quintero De Vazquez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TOMMY BAHAMA issued uniform wage statements to Ms. Quintero De Vazquez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TOMMY BAHAMA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because TOMMY BAHAMA did not record the time Ms. Quintero De Vazquez and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), TOMMY BAHAMA did not list the correct amount of gross wages and net wages earned by Ms. Quintero De Vazquez

and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TOMMY BAHAMA failed to accurately list the total number of hours worked by Ms. Quintero De Vazquez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

Further, and separate from these violations, TOMMY BAHAMA issued uniform wage statements to Ms. Quintero De Vazquez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Quintero De Vazquez's and other aggrieved employees' wage statements incorrectly list the employer's address as "400 FAIRVIEW AVE N STE #488 SEATTLE, WA 98109," but according to the California Secretary of State's website, TOMMY BAHAMA's entity address should be "999 PEACHTREE STREET, N.E., STE. 688 ATLANTA, GA 30309." *See example paystub below.*



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

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

1174(d), TOMMY BAHAMA willfully failed to maintain accurate payroll records for Ms. Quintero De Vazquez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

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

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

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

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

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

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

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

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

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

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

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option

of having their pay direct deposited into an account of their choosing. . . .”
(internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, TOMMY BAHAMA had an agreement with a payroll service provider for the issuance of payroll cards to employees, including other aggrieved employees, to discharge its wage payment obligations to its employees. Under TOMMY BAHAMA’s payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee, which resulted in a discount in their pay. Thus, TOMMY BAHAMA’s payroll debit card program was and continues to be unlawful as it did not give other aggrieved employees to access their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. TOMMY BAHAMA’s payroll card program is inconsistent with this policy because it presents a

number of obstacles and hurdles that, together, make it difficult for other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, TOMMY BAHAMA unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, TOMMY BAHAMA systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under TOMMY BAHAMA's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

TOMMY BAHAMA's payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California 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.

During the relevant time period, TOMMY BAHAMA willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. TOMMY BAHAMA's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. Thus, TOMMY BAHAMA paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

TOMMY BAHAMA's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

TOMMY BAHAMA’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TOMMY BAHAMA could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, TOMMY BAHAMA systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

TOMMY BAHAMA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. TOMMY BAHAMA’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TOMMY BAHAMA’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. TOMMY BAHAMA’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TOMMY BAHAMA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen 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."

The IWC states that subdivision 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

TOMMY BAHAMA's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. TOMMY BAHAMA could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

TOMMY BAHAMA did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, TOMMY BAHAMA denied them the use of seats nearby during lulls in their work duties. Moreover, TOMMY BAHAMA did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of TOMMY BAHAMA's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. TOMMY BAHAMA's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TOMMY BAHAMA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, TOMMY BAHAMA required Ms. Quintero De Vazquez and other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, during her employment, Ms. Quintero De Vazquez spent about \$15 to purchase a potato peeler, lemon squeezer, and measuring cup because TOMMY BAHAMA failed to provide her with these necessary tools, supplies, and/or equipment which were required for the restaurant to operate properly and/or meet management's expectations. Although TOMMY BAHAMA required Ms. Quintero De Vazquez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

TOMMY BAHAMA could have provided Ms. Quintero De Vazquez and other aggrieved employees with the actual tools, supplies, and/or equipment for use on the job. Or, TOMMY BAHAMA could have reimbursed employees for the costs of their tools, supplies, and/or equipment expenses. Instead, TOMMY BAHAMA passed these operating costs off onto Ms. Quintero De Vazquez and other aggrieved employees. At all relevant times, Ms. Quintero De Vazquez did not earn at least two (2) times the minimum wage.

Thus, TOMMY BAHAMA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Quintero De Vazquez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

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

employer(s) who violated Ms. Quintero De Vazquez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Quintero De Vazquez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Quintero De Vazquez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against TOMMY BAHAMA for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Quintero De Vazquez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Quintero De Vazquez's reasonable attempt to settle her dispute with TOMMY BAHAMA prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform TOMMY BAHAMA of Ms. Quintero De Vazquez's aforementioned grievances and the proposed remedies as detailed below, while affording TOMMY BAHAMA a reasonable opportunity to satisfy Ms. Quintero De Vazquez's demands.

Demand is hereby made that TOMMY BAHAMA shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. TOMMY BAHAMA shall pay Ms. Quintero De Vazquez and all other aggrieved employees employed by TOMMY BAHAMA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TOMMY BAHAMA shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. TOMMY BAHAMA shall conduct a survey or interview all current and former aggrieved employees in California who worked for TOMMY BAHAMA in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for tool, supply, and equipment expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TOMMY BAHAMA shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. TOMMY BAHAMA also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. TOMMY BAHAMA shall reimburse Ms. Quintero De Vazquez and all aggrieved employees who were required to pay for any business expenses incurred for TOMMY BAHAMA's benefit, including, but not limited to, costs of tool, supply, and equipment expenses, as required by Labor Code section 2802.
6. TOMMY BAHAMA shall pay accrued legal interest to Ms. Quintero De Vazquez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TOMMY BAHAMA shall provide Ms. Quintero De Vazquez and all aggrieved employees employed by TOMMY BAHAMA at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TOMMY BAHAMA shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), unlawful deductions (Labor Code sections 221 and 224), and secret payment of lower wages (Labor Code section 223).
9. TOMMY BAHAMA shall implement and provide suitable seating to all aggrieved employees.
10. TOMMY BAHAMA shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. TOMMY BAHAMA shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Alexander Lima

Copy: TOMMY BAHAMA R&R HOLDINGS, INC. (via U.S. Certified Mail); TOMMY BAHAMA BEVERAGES, LLC (via U.S. Certified Mail); TOMMY BAHAMA GROUP, INC. (via U.S. Certified Mail); OXFORD INDUSTRIES, INC. (via U.S. Certified Mail)

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Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Postmark
Here

TOMMY BAHAMA GROUP, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

PS Form 3800, April 2015 PSN 7530-02-000-9037 See Reverse for Instructions

TOMMY BAHAMA GROUP, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

TOMMY BAHAMA GROUP, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

9590 9402 7420 2055 3569 93

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3365

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express[®]
☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone
LAW ^{LLC}
1875 Century Park East, Suite 1000
Los Angeles, California 90067



7021 1970 0001 8870 3372

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Postmark
Here

TOMMY BAHAMA BEVERAGES, LLC
999 PEACHTREE ST., NE, SUITE 688
ATLANTA, GA 30309

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

TOMMY BAHAMA BEVERAGES, LLC
999 PEACHTREE ST., NE, SUITE 688
ATLANTA, GA 30309

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

TOMMY BAHAMA BEVERAGES, LLC
999 PEACHTREE ST., NE, SUITE 688
ATLANTA, GA 30309



9590 9402 7420 2055 3569 79

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3372

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

Capstone
LAW ^{LLC}
1875 Century Park East, Suite 1000
Los Angeles, California 90067

CERTIFIED MAIL



7021 1970 0001 8870 3389

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total Postage and Fees

Postmark
Here

OXFORD INDUSTRIES, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

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

OXFORD INDUSTRIES, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

OXFORD INDUSTRIES, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309

9590 9402 7420 2055 3569 86

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3389

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Priority Mail Express[®]
☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

TOMMY BAHAMA GROUP, INC.
999 PEACHTREE STREET, NE, STE. 688
ATLANTA, GA 30309



9590 9402 7420 2055 3569 93

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3365

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Megan Hawkins

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Megan Hawkins

C. Date of Delivery

08-08-22

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Insured Mail
☐ Insured Mail Restricted Delivery
(over \$500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

TOMMY BAHAMA BEVERAGES, LLC
999 PEACHTREE ST., NE, SUITE 688
ATLANTA, GA 30309



9590 9402 7420 2055 3569 79

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3372

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Megan Hawkins

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Megan Hawkins

C. Date of Delivery

08-08-22

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Insured Mail
☐ Insured Mail Restricted Delivery
(over \$500)

Domestic Return Receipt