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April 9, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/418)

Subject: *Melinda Silva v. Agostini Restaurants, Inc.*

Dear PAGA Administrator:

This office represents Melinda Silva in connection with her claims under the California Labor Code. Ms. Silva was an employee of AGOSTINI RESTAURANTS, INC. ("AGOSTINI").

The employer may be contacted directly at the address below:

AGOSTINI RESTAURANTS, INC.
40365 BRICKYARD DRIVE, SUITE 103
MADERA, CA 93636

Ms. Silva intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Silva seeks relief on behalf of herself, the State of California, and other persons who are or were employed by AGOSTINI 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.

AGOSTINI employed Ms. Silva as an hourly paid, non-exempt employee from approximately October 2022 to September 2024. Ms. Silva worked for AGOSTINI as Crew Member, Crew Trainer, and Shift Manager at its McDonald's restaurant in Madera, California (located at 2290 W. Cleveland Ave, Madera, CA 93637). During her employment, Ms. Silva typically worked eight (8) hours or more per day and five (5) days or more per week. At the time Ms. Silva's employment with AGOSTINI ended, she earned approximately $21.50 per hour. Her job duties included, without limitation, cleaning the restaurant, performing food safety checks, cooking, operating the cash register, and taking drive-thru orders.

AGOSTINI has committed each of the following Labor Code violations against Ms. Silva, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

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

AGOSTINI RESTAURANTS, INC. is a California corporation that operates approximately six (6) McDonald's franchises throughout California. Upon information and belief, AGOSTINI maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Madera, California, for all non-exempt, hourly paid employees working for AGOSTINI in California, including Ms. Silva and other aggrieved employees. At all relevant times, AGOSTINI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Silva and other aggrieved employees, regardless of their location or position.

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

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

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

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

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[1] These facts, theories, and claims are based on Ms. Silva's experience and counsel's review of those records currently available relating to Ms. Silva'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. Silva 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.

During the relevant time period, AGOSTINI had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Silva and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Ms. Silva and other aggrieved employees to work off-the-clock outside of their scheduled shift times. Specifically, AGOSTINI's management pressured Ms. Silva and other aggrieved employees to record their scheduled shift start-times and shift end-times instead of their actual hours worked to limit the overtime hours employees were eligible to be compensated for. Moreover, this policy of limiting overtime, coupled with AGOSTINI's use of labor budgets and practice of understaffing (*see infra*), led Ms. Silva and other aggrieved employees to work off-the-clock before and after their scheduled shifts, and on their days off in order to complete their assigned tasks, such as completing online training modules. Because AGOSTINI discouraged overtime accrual, Ms. Silva and other aggrieved employees were required to complete assigned tasks outside of their scheduled shifts without being compensated for the time they worked.

For example, approximately five (5) times a month, for about 30 minutes each instance, Ms. Silva was required to travel to AGOSTINI's other restaurant locations to pick up supplies and ingredients, such as burger patties, lids, and cups, on her way to work and prior to clocking in for her shift. Moreover, AGOSTINI provided Ms. Silva and other aggrieved employees with a limited number of timekeeping terminals at its restaurants, which impeded their ability to clock in at the start of their shifts and resulted in Ms. Silva and other aggrieved employees waiting off-the-clock and under AGOSTINI's control, time for which they were not paid. For instance, AGOSTINI provided Ms. Silva and other aggrieved employees who worked at its restaurant on Cleveland Avenue in Madera, California, with only one (1) timekeeping terminal for them to clock in for a shift, thus forcing Ms. Silva and other aggrieved employees to wait in line off-the-clock. Ms. Silva would be ready to clock in for the start of her shifts, but was required to wait 1-2 minutes each time before being able to clock in, time for which she was not paid.

Moreover, in conjunction with AGOSTINI's policies limiting overtime accrual, AGOSTINI also had a company-wide security policy and/or practice for closing shifts requiring employees to leave the restaurant premises together in a group. After clocking out at the end of their shifts, Ms. Silva and other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave AGOSTINI's premises together. For example, when scheduled for closing shifts, Ms. Silva would complete her own closing tasks, clock out, and then have to wait until her supervisor and/or coworkers had completed their respective closing duties, before being released. As a result, Ms. Silva and other aggrieved employees were subject to AGOSTINI's control after they had clocked out for their shifts, but were not compensated for this time.

In addition, AGOSTINI had, and continues to have, a company-wide policy and/or practice of requiring Ms. Silva and other aggrieved employees to complete mandatory training modules, but did not permit them to complete them during their shifts. For example, on at least one occasion, Ms. Silva was required to complete food safety training modules while off-the-clock. As another example, Ms. Silva was required to complete online training modules on Shift Manager duties, during her days off or when she was at home, which took approximately eight (8) hours total to complete, time for which she was not paid. Thus, AGOSTINI failed to track all the time Ms. Silva and other aggrieved employees spent performing work-related tasks outside of their scheduled shifts, and Ms. Silva and other aggrieved employees received no compensation for this time.

Second, upon information and belief, AGOSTINI had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. AGOSTINI's uniform use of labor budgeting and understaffing resulted in a failure to provide Ms. Silva and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers, which included meeting a 3 ½-minute time target/goal for drive-thru orders while simultaneously preparing walk-in customers' orders. Because AGOSTINI 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. Silva and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, AGOSTINI had a practice of failing to schedule meal periods, which further caused Ms. Silva and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, about three (3) times per week, Ms. Silva had her meal periods interrupted by other employees to discuss work-related matters.

Third, in conjunction with understaffing its restaurants, AGOSTINI had a requirement that a managerial employee be present on the floor at all times and prohibited managers, including Shift Managers, from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets AGOSTINI implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Silva and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the restaurant and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving AGOSTINI's premises for their unpaid meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. Silva and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, Ms. Silva was required to remain on premises for her meal periods when she was the only managerial employee on the schedule. Because Ms. Silva and other aggrieved employees were restricted from leaving the premises during meal periods, Ms. Silva and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, AGOSTINI effectively maintained control over Ms. Silva and other aggrieved employees during unpaid meal periods.

Fourth, on information and belief, because AGOSTINI frowned upon employees accruing meal period premiums, AGOSTINI's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal period premiums that AGOSTINI would otherwise owe. For example, Ms. Silva was instructed by her General Manager to clock out for her meal period but to continue working through her unpaid meal period if the restaurant was busy. Thus, AGOSTINI did not record all hours worked during meal periods, and Ms. Silva and other aggrieved employees performed work during meal periods for which they were not paid.

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

AGOSTINI's failure to pay Ms. Silva 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. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1182.15, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1182.15, 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 suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code Regs. tit. 8, § 11050(2)(M) (defining "Hours Worked").

First, as set forth above, as a result of AGOSTINI's policy of limiting the amount of overtime employees could accrue, AGOSTINI required Ms. Silva and other aggrieved employees to perform work off-the-clock. As stated, AGOSTINI required Ms. Silva and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts and on their days off, including traveling to AGOSTINI's other restaurant locations to pick up supplies, waiting until a timeclock terminal was available for clocking-in, completing mandatory online training modules, and waiting to leave the premises in a group. As a result, AGOSTINI failed to track this time that Ms. Silva and other aggrieved employees spent working off-the-clock, and thus, Ms. Silva and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to AGOSTINI's company-wide policies and/or practices of utilizing labor budgets, understaffing its locations, failing to schedule meal periods, and requiring managerial employees to stay on the restaurant premises during meal periods, Ms. Silva and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and belief, in order to limit meal period premiums that AGOSTINI would otherwise owe, AGOSTINI pressured Ms. Silva and other aggrieved employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted.

AGOSTINI did not pay at least minimum wages for all hours worked by Ms. Silva and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, AGOSTINI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1182.15, 1194, 1197, 1197.1, and 1198.

Accordingly, AGOSTINI regularly failed to pay at least minimum wages to Ms. Silva and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections

1182.12, 1182.15, 1194, 1197, 1197.1, and 1198. Ms. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1182.15, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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.

First, during the relevant time period, as stated, AGOSTINI had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation. This practice of understaffing, combined with the assignment of heavy workloads, including pressuring employees to meet a 3 ½-minute time target/goal for drive-thru orders while simultaneously preparing walk-in orders, has resulted in a lack of meal period coverage and prevented Ms. Silva and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated, AGOSTINI failed to schedule meal periods, which further caused Ms. Silva and other aggrieved employees to not be relieved of their duties for compliant meal periods. In conjunction with understaffing its restaurants, as stated above, AGOSTINI had a requirement that a managerial employee, including Shift Managers, be present on the restaurant floor at all times, but AGOSTINI's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Silva was sometimes the only managerial employee on duty, and was required to remain on premises for meal periods when she was the only managerial employee on the schedule. Because Ms. Silva was restricted from leaving the premises during meal periods, she was denied the ability to use meal periods freely for her own purposes, such as running personal errands.

As a result, Ms. Silva and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, about three (3) times per week, Ms. Silva had her meal periods interrupted by other employees to discuss work-related matters. Further, at least two (2) times per week, Ms. Silva took her meal periods late, after the fifth hour of work, due to the lack of meal period coverage and heavy workload. Thus, AGOSTINI failed to provide Ms. Silva and other aggrieved employees with compliant, 30-minute meal periods.

Second, as stated, because AGOSTINI frowned upon employees accruing meal period premiums, AGOSTINI's management pressured employees to clock out for meal periods, upon threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal period premiums that would need to be paid by AGOSTINI. For example, as stated, Ms. Silva was instructed by her General Manager to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely, uninterrupted meal periods. Ms. Silva 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.

At all times herein mentioned, AGOSTINI knew or should have known that, as a result of these policies, Ms. Silva and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. AGOSTINI further knew or should have known that AGOSTINI did not pay Ms. Silva and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, AGOSTINI 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. Silva and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, AGOSTINI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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, 273 (2016).

During the relevant time period, AGOSTINI regularly failed to authorize and permit Ms. Silva 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, AGOSTINI's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. Silva and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. AGOSTINI also failed to schedule rest periods, which, coupled with AGOSTINI's failure to provide adequate rest period coverage, further led to Ms. Silva and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, in conjunction with understaffing its restaurants, AGOSTINI had a requirement that a managerial employee, including Shift Managers, be present on the restaurant floor at all times, but AGOSTINI's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Silva was sometimes the only managerial employee on duty, and was required to remain on premises for rest periods when she was the only managerial employee on the schedule. Because Ms. Silva was restricted from leaving the premises during rest periods, she was denied the ability to use rest periods freely for her own purposes, such as running personal errands.

Furthermore, upon information and belief, during the relevant time period, AGOSTINI maintained a company-wide on-premises rest period policy, which effectively required that Ms. Silva and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. Silva and/or 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, AGOSTINI effectively maintained control over Ms. Silva and/or aggrieved employees during rest periods.

As a result of AGOSTINI's practices and policies, Ms. Silva and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Silva regularly had to forgo her rest periods due to the heavy workload, understaffing, and AGOSTINI's failure to schedule rest periods for employees.

AGOSTINI has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Silva and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, AGOSTINI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

Because AGOSTINI did not record the time Ms. Silva and other aggrieved employees spent working off-the-clock, AGOSTINI did not list the correct amount of gross wages and net wages earned by Ms. Silva and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, AGOSTINI failed to accurately list the total number of hours worked by Ms. Silva 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).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours 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), AGOSTINI willfully failed to maintain accurate payroll records for Ms. Silva 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, AGOSTINI engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Silva and other aggrieved employees, in violation of section 1198.

Because AGOSTINI failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Silva 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. Silva 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. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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, AGOSTINI failed to pay Ms. Silva 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. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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.

AGOSTINI willfully failed to pay Ms. Silva and other aggrieved employees who are no longer employed by AGOSTINI 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 AGOSTINI's employ.

Ms. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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."

First, during the relevant time period, AGOSTINI, on a company-wide basis, required Ms. Silva and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Ms. Silva was required to use her personal cellular phone to communicate with her managers regarding inventory issues and requests to pick up supplies from AGOSTINI's other restaurant locations, handle receipt reconciliation for issues with customer orders, and complete checklists for shift manager walk-through tasks. Although AGOSTINI required Ms. Silva and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, AGOSTINI failed to reimburse them for their costs incurred.

Second, during the relevant time period, AGOSTINI, on a company-wide basis, required that Ms. Silva and other aggrieved employees use their own personal vehicles to run company errands. For example, at least five (5) times per month, Ms. Silva was required to use her personal vehicle to drive to pick up ingredients and supplies, such as burger patties, cups, and lids, from AGOSTINI's other restaurant locations on her way to work, which required Ms. Silva to travel up to 35 miles roundtrip. Although AGOSTINI required Ms. Silva and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, AGOSTINI failed to reimburse them for their mileage or travel expenses.

Third, AGOSTINI, on a company-wide basis, required Ms. Silva and other aggrieved employees to report to work in clean and presentable uniforms bearing the McDonald's company logo and name, including uniform shirts and hats. However, AGOSTINI did not provide Ms. Silva and other aggrieved employees with sufficient uniform items to wear in relation to the tasks they were required to perform and the number of shifts they worked throughout the week. For example, AGOSTINI only provided Ms. Silva with two (2) uniform shirts and two (2) uniform hats at the time of hire. Because AGOSTINI failed to provide employees with an adequate number of uniform items, Ms.

Silva and other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. Moreover, due to the nature of restaurant work, Ms. Silva's uniform items would become stained with grease and oil, soiled, and/or acquire an unpleasant odor such that Ms. Silva had to wash her uniforms more frequently than her regular clothing, thus incurring additional utility and laundry expenses. Therefore, AGOSTINI failed to maintain the uniforms it required Ms. Silva and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

Thus, AGOSTINI 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. Silva and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring AGOSTINI into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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." AGOSTINI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Silva's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Silva 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(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Silva, 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 AGOSTINI for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1182.15, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

Olivia Green

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