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County of San Diego
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11 ROBIN CATHEY, individually, and on
12 behalf of other members of the general
13 public similarly situated, and as an
aggrieved employee pursuant to the Private
14 Attorneys General Act ("PAGA"),

15 Plaintiff,

16 vs.

17 FAROOQI FOOD MANAGEMENT, INC.,
a California corporation; and DOES 1
18 through 10, inclusive,

19 Defendants.

Case No.: 37-2022-00035056-CU-OE-CTL

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

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

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

Jury Trial Demanded

1 Plaintiff Robin Cathey, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 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 non-exempt, hourly
9 paid employees 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. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of Information
5 forms with the California Secretary of State designating a principal place of business in San
6 Diego, County of San Diego, in accordance with California Corporations Code section
7 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
8 employ persons in this county, and employed Plaintiff in this county, and thus a substantial
9 portion of the transactions and occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Robin Cathey is a resident of San Diego, in San Diego County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
13 approximately November 2017 to October 2021. Plaintiff worked as a Server at Defendants'
14 location in Del Mar, California. During her employment, Plaintiff typically worked ten (10) to
15 twelve (12) hours or more per day and six (6) days per week. Plaintiff's primary job duties
16 included, without limitation, seating customers, taking and bringing customers' orders, cleaning
17 work areas and dining room, handling customer complaints, and training new employees.

18 5. FAROOQI FOOD MANAGEMENT, INC. was and is, upon information and
19 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county and the State of California.

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

25 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
26 were the partners, agents, owners, or managers of FAROOQI FOOD MANAGEMENT, INC.
27 at all relevant times.

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1 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
2 acts and omissions alleged herein was performed by, or is attributable to, FAROOQI FOOD
3 MANAGEMENT, INC. and/or DOES 1 through 10 (collectively, “Defendants” or
4 “FAROOQI”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
5 in concert with, each of the other co-Defendants and was acting within the course and scope of
6 such agency, employment, joint venture, or concerted activity with legal authority to act on the
7 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
8 official policy of Defendants.

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

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

16 11. Under California law, Defendants are jointly and severally liable as employers
17 for the violations alleged herein because they have each exercised sufficient control over the
18 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
19 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
20 their work schedule and/or conditions of employment, determined their rate of pay, and
21 maintained their employment records. Defendants suffered or permitted Plaintiff and class
22 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
23 employment relationship. As joint employers of Plaintiff and class members, Defendants are
24 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
25 class members under the law.

26 12. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
27 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
28 members because Defendants have:

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

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

19 14. FAROOQI FOOD MANAGEMENT, INC. and DOES 1 through 10 are therefore
20 alter egos of each other.

21 15. Adherence to the fiction of the separate existence of Defendants would permit an
22 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
23 liability for the wrongful acts committed by them under the name FAROOQI.

24 **GENERAL ALLEGATIONS**

25 16. Defendants are franchisees of Denny's and Jack in the Box restaurants, including
26 six (6) restaurants in California. Upon information and belief, Defendants maintain a single,
27 centralized Human Resources ("HR") department at their company headquarters in San Diego,
28 California, which is responsible for the recruiting and hiring of new employees, and

1 communicating and implementing Defendants' company-wide policies, including timekeeping
2 policies and meal and rest period policies, to employees throughout California.

3 17. In particular, Plaintiff and class members, on information and belief, received
4 the same standardized documents and/or written policies. Upon information and belief, the
5 usage of standardized documents and/or written policies, including new-hire documents,
6 indicate that Defendants dictated policies at the corporate level and implemented them
7 company-wide, regardless of their employees' assigned locations or positions. Upon
8 information and belief, Defendants set forth uniform policies and procedures in several
9 documents provided at an employee's time of hire.

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

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

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

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

26 22. 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 certain wages for
28 overtime compensation and that they were not receiving certain wages for overtime

1 compensation.

2 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and/or class members were entitled to be paid at a regular rate
4 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
5 premiums, that included as eligible income all remuneration required by law, including but not
6 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
7 of compensation, but failed to include all forms of remuneration in calculating the regular rate
8 of pay for Plaintiff and/or class members.

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

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to meal periods in accordance
16 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
17 additional hour of pay at their regular rates of pay when they were not provided with timely,
18 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
19 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
20 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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

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

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

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

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to timely payment of wages
18 during their employment. In violation of the California Labor Code, Plaintiff and class members
19 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
20 wages, meal and rest period premiums, and/or reporting time pay within permissible time
21 periods.

22 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they were prohibited from issuing instruments that were improper forms
24 of payment, in that Defendants paid wages to Plaintiff and/or class members using a non-
25 sufficient funds instrument. In violation of the California Labor Code, Defendants did not allow
26 Plaintiff and/or class members to access their entire wages without discount and without delay,
27 because Defendants had insufficient funds for the payment of wages.

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1 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to one day's rest in seven. In
3 violation of the California Labor Code, Defendants required Plaintiff and class members to work
4 more than six consecutive days without a day of rest, where the total hours worked exceeded 30
5 hours in any week or six hours in any one day thereof.

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

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

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to be paid a split-shift
19 premium when they returned to work for an additional shift in the same day, after having been
20 clocked out for more than an hour. In violation of the California Labor Code and applicable
21 IWC Wage Order, Defendants did not pay Plaintiff and class members all split-shift premiums
22 due.

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

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1 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiff and class members with written notice of the material terms of their employment with
4 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

11 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of the

specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

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

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

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged violation
2 is cured, including a description of actions taken, and no civil action
3 pursuant to Section 2699 may commence. If the alleged violation is not
4 cured within the 33-day period, the aggrieved employee may commence
5 a civil action pursuant to Section 2699.

6 44. On September 20, 2022, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
10 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
11 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
12 PAGA Case Number LWDA-CM-909195-22. A true and correct copy of Plaintiff's written
13 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

17 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a),
20 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

1 criminal penalty provided by law.”

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

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

8 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
9 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
10 private attorney general, seeks assessment and collection of civil penalties for herself, all other
11 aggrieved employees, and the State of California against Defendants for violations of California
12 Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
13 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

14 **CLASS ACTION ALLEGATIONS**

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

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

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

21 All persons who worked for Defendants as non-exempt, hourly
22 paid employees in California, within four years prior to the filing
of the initial complaint¹ until the date of trial (“Class”).

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

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

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

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

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

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

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

- 1 (i) Whether Defendants failed timely to pay overtime wages, minimum
2 wages, meal and rest period premiums, and/or reporting time pay due to
3 Plaintiff and class members during their employment;
- 4 (j) Whether Defendants failed to issue instruments with sufficient funds for
5 payment of wages to Plaintiff and/or class members;
- 6 (k) Whether Defendants failed to provide Plaintiff and class members one
7 day's rest in seven;
- 8 (l) Whether Defendants failed to provide Plaintiff and class members with
9 suitable seating;
- 10 (m) Whether Defendants required Plaintiff and class members to report to
11 work, but failed to provide them with work or provided them with less
12 than half their usual or scheduled day's work, without properly
13 compensating them as required by California Code of Regulations, Title
14 8, section 11050(5);
- 15 (n) Whether Defendants required Plaintiff and class members to return to
16 work for an additional shift in the same day, after having been clocked
17 out for more than an hour, without paying Plaintiff and class members an
18 addition hour of pay at the minimum wage as required by California Code
19 of Regulations, Title 8, section 11050(4)(C);
- 20 (o) Whether Defendants failed to reimburse Plaintiff and class members for
21 necessary and required business-related expenditures and/or losses
22 incurred by them in the scope of their employment;
- 23 (p) Whether Defendants failed to provide written notice of information
24 material to Plaintiff's and class members' employment with Defendants;
- 25 (q) Whether Defendants engaged in unlawful and unfair business practices in
26 violation of California Business & Professions Code sections 17200, *et*
27 *seq.*; and

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

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

- 5 (a) Numerosity: The class members are so numerous that joinder of all
6 members would be unfeasible and impractical. The membership of the
7 entire class is unknown to Plaintiff at this time; however, the class is
8 estimated to be greater than one hundred (100) individuals and the
9 identity of such membership is readily ascertainable by inspection of
10 Defendants' employment records.
- 11 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
12 the interests of each class member with whom she has a well-defined
13 community of interest, and Plaintiff's claims (or defenses, if any) are
14 typical of all class members as demonstrated herein.
- 15 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
16 the interests of each class member with whom she has a well-defined
17 community of interest and typicality of claims, as demonstrated herein.
18 Plaintiff acknowledges that she has an obligation to make known to the
19 Court any relationship, conflicts or differences with any class member.
20 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
21 governing class action discovery, certification, and settlement. Plaintiff
22 has incurred, and throughout the duration of this action, will continue to
23 incur costs and attorneys' fees that have been, are, and will be necessarily
24 expended for the prosecution of this action for the substantial benefit of
25 each class member.
- 26 (d) Superiority: The nature of this action makes the use of class action
27 adjudication superior to other methods. A class action will achieve
28 economies of time, effort, and expense as compared with separate

lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)

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

60. 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.”

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

62. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members working more than eight (8) hours in a day or

1 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
2 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

8 64. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
11 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
12 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
13 the seventh (7th) day of work.

14 65. During the relevant time period, Defendants willfully failed to pay all overtime
15 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
16 members were not paid overtime premiums for all of the hours they worked in excess of eight
17 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
18 in a week, because all hours worked were not recorded.

19 66. First, during the relevant period, Defendants had, and continue to have, a
20 company-wide practice and/or policy of discouraging and impeding Plaintiff and class members
21 from recording hours worked that were outside of their scheduled shifts, as well as improperly
22 adjusting Plaintiff's and class members' clock-in and/or clock-out duration times in their
23 timekeeping system, in order to limit the amount of overtime employees could accrue. On
24 information and belief, this limitation on overtime accrual and their time-shaving policy was
25 based on a company-wide policy of staffing restaurant locations strictly based on the labor hours
26 or labor budget set by corporate. These policies, coupled with Defendants' understaffing policy
27 and assignment of heavy workloads (*see infra*), led Plaintiff and class members to work off-the-
28 clock outside of scheduled shift times in order to complete their assigned tasks.

1 67. Second, as a result of this restriction on overtime accrual, Defendants forced
2 Plaintiff and class members to perform work off-the-clock outside of their scheduled shifts. For
3 example, because Defendants' timekeeping system was integrated with the company's point-
4 of-sale ("POS") system, Plaintiff and class members would often have to wait at least several
5 minutes to clock in for the start of their shifts, because other employees were using the POS
6 system to handle customer transactions. Moreover, due to understaffing, Plaintiff was often the
7 only server on her shift, which frequently prevented her from clocking in until she had already
8 performed work for 10-15 minutes, because customers were waiting to be seated, have their
9 orders taken, or get cashed out as soon as she entered the premises. As another example,
10 Plaintiff was required to complete errands and participate in COVID-19 health screenings
11 before clocking in. On at least three (3) occasions, Plaintiff drove for approximately 30 mins
12 to and from other Denny's locations to pick up ingredients and/or supplies before being able to
13 clock in. As stated, Plaintiff was also required to undergo pre-shift temperature checks, time
14 for which she was not paid, which took about five (5) minutes per instance. Furthermore,
15 Defendants' management would also call and send text messages to Plaintiff on her personal
16 cellular phone on her days off and while otherwise off-the-clock, regarding customer tickets,
17 staffing issues, and other work-related matters. Finally, several times during her employment,
18 Plaintiff was required to complete training modules off-the-clock on a work computer, time for
19 which she was not paid. Thus, Defendants failed to track this time Plaintiff and class members
20 spent working before or after scheduled shifts or on their off-days, and Plaintiff and class
21 members received no compensation for this time.

22 68. Third, as stated, Defendants pressured Plaintiff and class members to clock out
23 at the end of their scheduled shift times, but to continue working, in order to strictly limit the
24 amount of overtime pay Defendants would otherwise owe. Thus, Plaintiff and class members
25 performed work after the end of their shifts for which they were not paid. For example, Plaintiff
26 often worked up to two (2) hours after clocking out because the restaurant was understaffed,
27 had a high volume of customers, and management would admonish employees if they remained
28 clocked in after working eight (8) hours. Moreover, as stated, on information and belief,

1 Defendants engaged in a policy and/or practice of altering time records at the discretion of
2 management. For example, Defendants' management would adjust Plaintiff's and class
3 members' clock-in and/or clock-out duration times and delete time recorded outside of their
4 scheduled shifts to avoid having to pay overtime wages. As a result of Defendants' policy
5 and/or practice, Plaintiff and class members were not paid overtime wages for all overtime hours
6 incurred.

7 69. Fourth, as stated, Defendants' policy and/or practice of labor budgeting and/or
8 limited payroll allocation has resulted in chronic understaffing and a lack of adequate meal
9 period coverage, because there were too few employees on duty to handle the workload and
10 attend to customers. Because Defendants did not employ or staff a sufficient number of
11 employees to meet customer demand, there was no one available to relieve employees needing
12 meal period coverage, and Plaintiff and class members were not always afforded uninterrupted
13 30-minute meal periods during shifts when they were entitled to receive a meal period.
14 Moreover, Defendants have a practice of failing to schedule meal periods and/or adhere to a
15 schedule for meal periods, which further caused Plaintiff and class members to not be relieved
16 of their duties for compliant meal periods. Consequently, Plaintiff and class members were
17 required to work through and/or had their unpaid meal periods interrupted in order to complete
18 their assigned duties and handle customer demand, time for which they were not paid.

19 70. Furthermore, Defendants utilized a timekeeping system that automatically shut
20 down the POS machines that employees used to input customers' orders at the fifth hour of each
21 employee's shift (if they had not yet clocked out for their meal period) in order to strictly limit
22 the meal penalties that Defendants would otherwise owe. Indeed, Defendants' timekeeping
23 system would render the POS machines inoperable unless the employees due for a meal period
24 had clocked out, resulting in employees being forced to clock out just prior to their fifth hour
25 of work and record compliant meal periods, regardless of whether these employees had actually
26 received compliant meal periods, in order to keep the POS system functioning. Moreover,
27 Defendants' managers pressured Plaintiff and class members to continue working even when
28 clocked out for a meal period. As a result, Plaintiff was forced by Defendants' management

1 and the POS system to clock out for her meal period by the fifth hour of her shift but continued
2 working through her entire meal period due to the chronic understaffing of the restaurant.
3 Consequently, Plaintiff and class members performed work during meal periods for which they
4 were not paid.

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

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

17 **SECOND CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 19 **Minimum Wages** 20 **(Against all Defendants)**

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

23 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
24 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
25 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
26 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
27 time during which an employee is subject to the control of an employer, and includes all the
28 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. First, as stated, due to Defendants’ restrictions on overtime accrual, Defendants systematically failed to record all hours worked, and Plaintiff and class members were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties, including attending to customers, traveling to Defendants’ other restaurant locations to pick up ingredients/supplies, undergoing health screenings, responding to phone calls and/or text messages from managers, and completing mandatory online training modules. However, Defendants failed to compensate Plaintiff and class members at least minimum wages for the time they spent performing work-related tasks before and after their scheduled shift times. As also stated, on information and belief, Defendants had, and continue to have, a company-wide policy of adjusting or shaving down Plaintiff’s and class members’ hourly clock-in and clock-out times in their timekeeping system, further resulting in the failure to pay Plaintiff and class members minimum wages for all hours actually worked.

76. Second, as set forth above, due to Defendants’ company-wide practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule and/or adhere to a schedule for 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 off-the-clock. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, Defendants’ integrated POS and timekeeping system forced employees to clock out by the fifth hour of their shift to reflect compliant meal periods, but Defendants’ management pressured employees to continue working, time for which they were not paid. Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

THIRD CAUSE OF ACTION

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

Violations

(Against all Defendants)

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

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

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

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

83. First, during the relevant time period, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of labor budgeting and/or limited payroll resulting

1 in understaffing while assigning heavy workloads, and failing to schedule meal periods and/or
2 adhere to a schedule for meal periods, which has resulted in a lack of meal period coverage.
3 Consequently, Plaintiff and class members were required to work through and/or had their meal
4 periods interrupted in order to complete their assigned duties and handle customer demand.
5 Thus, Plaintiff and class members missed their meal periods entirely, had their meal periods cut
6 short to return to work, or waited extended periods of time before taking meal periods.

7 84. Second, as stated, in order to prevent Plaintiff and class members from incurring
8 meal period penalties that Defendants would otherwise owe, Defendants' timekeeping system
9 automatically shut down the point of sale ("POS") machines that employees used to input
10 customers' orders at the fifth hour of each employee's shift (if they had not yet clocked out for
11 their meal period) in order to strictly limit the meal penalties that would need to be paid by
12 Defendants. Indeed, as stated, Defendants' timekeeping system would render the POS machines
13 inoperable unless the employees due for a meal period had clocked out, resulting in employees
14 being forced to clock out just prior to their fifth hour of work and record compliant meal periods,
15 regardless of whether these employees had actually received compliant meal periods, in order
16 to keep the POS system functioning. Moreover, Defendants' managers pressured Plaintiff and
17 class members to continue working even when clocked out for a meal period. As a result,
18 Plaintiff was forced by Defendants' management and the POS system to clock out for her meal
19 period by the fifth hour of her shift but continued working through her entire meal period due
20 to the chronic understaffing of the restaurant. As a result, Plaintiff would not receive compliant
21 meal periods.

22 85. As a result, Plaintiff and class members would be forced to work in excess of
23 five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or
24 had to forgo their meal periods altogether. For example, Plaintiff missed her meal periods
25 entirely because of Defendants' policy and/or practice of understaffing while assigning heavy
26 workloads.

27 86. Moreover, Defendants did not provide Plaintiff and class members with second
28 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example,

1 during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day at least
2 five (5) days per week and missed all second 30-minute meal periods to which she was entitled.
3 Plaintiff and class members did not sign valid meal period waivers on days that they were
4 entitled to meal periods and were not relieved of all duties.

5 87. At all times herein mentioned, Defendants knew or should have known that, as a
6 result of these policies, Plaintiff and class members were prevented from being relieved of all
7 duties and required to perform some of their assigned duties during meal periods. Defendants
8 further knew or should have known that Defendants did not pay Plaintiff and class members
9 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

10 88. Moreover, Defendants engaged in a company-wide practice and/or policy of not
11 paying all meal period premiums owed when compliant meal periods are not provided. Because
12 of this practice and/or policy, Plaintiff and class members have not received all premium pay
13 for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
14 and class members compliant meal periods in violation of California Labor Code sections 226.7,
15 512(a), and 516 and failed to pay the full meal period premiums due.

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

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 22 **(Against all Defendants)**

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

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

28 ///

1 92. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 93. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest periods
10 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
11 must “relinquish any control over how employees spend their break time, and relieve their
12 employees of all duties—including the obligation that an employee remain on call. A rest
13 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
14 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
15 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
16 additional hour of pay at their regular rates of pay for each work day that a required rest period
17 was not authorized and permitted.

18 94. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
20 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
21 practices, including company-wide use of labor budgeting and/or limited payroll allocation,
22 understaffing, and assigning heavy workloads, prevented Plaintiff and class members from
23 being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest
24 periods at all which, coupled with Defendants’ failure to provide adequate rest period coverage,
25 further led to Plaintiff and class members not being authorized and permitted to take rest
26 periods.

27 95. Furthermore, upon information and belief, Defendants maintained and
28 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and

1 class members remain on or near the premises during their rest periods. Because Plaintiff and
2 class members were restricted from leaving Defendants' premises during rest periods, they were
3 denied the ability to use their rest periods freely for their own purposes, such as completing
4 personal errands. Thus, Defendants effectively maintained control over Plaintiff and class
5 members during rest periods.

6 96. As a result of Defendants' practices and policies, Plaintiff and class members
7 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
8 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
9 throughout her employment, Plaintiff had to forego almost all of her rest periods because of the
10 heavy workload.

11 97. Defendants have also engaged in a company-wide practice and/or policy of not
12 paying all rest period premiums owed when compliant rest periods are not authorized and
13 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
14 premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and class
15 members rest periods and failed to pay them rest period premiums due, in violation of Labor
16 Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

21 **FIFTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

23 **Statements and Failure to Maintain Accurate Payroll Records**

24 **(Against all Defendants)**

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

27 100. At all relevant times herein set forth, California Labor Code section 226(a)
28 provides that every employer shall furnish each of his or her employees an accurate and

1 complete itemized wage statement in writing, including, but not limited to, the name and address
2 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
3 and all applicable rates of pay.

4 101. At all relevant times, Defendants have knowingly and intentionally provided
5 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
6 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
7 fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of
8 the legal entity that is the employer; and all applicable hourly rates in effect during the pay
9 period, including rates of pay for overtime wages, and the corresponding number of hours
10 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
11 226(a)(5), 226(a)(8), and 226(a)(9).

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

21 103. Additionally, and separate from these violations, Defendants issued uniform
22 wage statements to Plaintiff and Subclass members that failed to correctly list the address of the
23 legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8)
24 is to provide California employees with transparency as to the true identity of their employer,
25 to allow the employee to contact their employer during employment or in the future for various
26 reasons, including filing an administrative claim, judicial claim, or other action to seek relief
27 against their employer, to obtain unemployment benefits, etc. Plaintiff's and Subclass
28 members' wage statements only give the city, state, and zip code of the employer's address,

1 incompletely listing Defendants’ address as “San Diego, CA 92121.” Defendants also issued
2 wage statements to Plaintiff and Subclass members that fail to list the employing entity’s
3 address at all. For example, on information and belief, Defendants uniformly failed to list the
4 employing entity’s address on Plaintiff’s and Subclass members’ final wage statements,
5 including Plaintiff’s wage statement dated October 14, 2021.

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

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

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

1 are required to keep accurate time records showing when the employee begins and ends each
2 work period and meal period. During the relevant time period, Defendants engaged in company-
3 wide practices and/or policies of failing to record actual hours worked, and thereby failed to
4 keep accurate records of work period and/or meal period start and stop times for Plaintiff and
5 Subclass members, in violation of section 1198. Also, in light of Defendants' failure to provide
6 Plaintiff and Subclass members with second 30-minute meal periods to which they were
7 entitled, Defendants kept no records of meal start and end times for second meal periods.

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

12 **SIXTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 14 **Termination** 15 **(Against all Defendants)**

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

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

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

116. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee,

are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

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

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

EIGHTH CAUSE OF ACTION

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

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

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

122. The applicable IWC Wage Order, California Code of Regulations, Title 8, section 11050(5)(A), provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or

1 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
2 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's
3 regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of
4 the reporting time regulation" is "to guarantee at least partial compensation for employees who
5 report to work expecting to work a specified number of hours, and who are deprived of that
6 amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v.*
7 *AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

8 123. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
10 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
11 work for their usual or scheduled shift but were put to work for less than half of their usual or
12 scheduled day's work.

13 124. Defendants had a company-wide practice of sending Plaintiff and class members
14 home early from their shifts, including before they had worked at least half of their usual or
15 scheduled shift, but would not pay Plaintiff and class members for half of their scheduled shift.
16 For example, at least twelve (12) times throughout her employment, Defendants' managers sent
17 Plaintiff home before half of her scheduled shift was over, but, on information and belief,
18 Plaintiff was only paid for the time she had worked. Although Plaintiff and class members
19 reported to work based on the schedule that was provided to them, Defendants would send them
20 home before they worked at least half of their usual or scheduled shifts. When this occurred,
21 Defendants did not pay Plaintiff and class members for at least half of their scheduled day's
22 work or the minimum reporting time pay.

23 125. Accordingly, Plaintiff and class members were not properly compensated with
24 reporting time pay in violation of California Labor Code section 1198 and California Code of
25 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled to
26 recover from Defendants unpaid wages and interest.

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1 **NINTH CAUSE OF ACTION**

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

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

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

19 128. First, during the relevant time period, Defendants, on a company-wide basis,
20 required Plaintiff and class members to use their personal mobile devices, including, but not
21 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse
22 them for the costs of their work-related mobile device and/or mobile data expenses. For
23 example, Defendants contacted Plaintiff on her personal mobile device to discuss work-related
24 issues and ask questions pertaining to customer tickets, staffing issues, and other matters.
25 Although Defendants required Plaintiff and class members to use their personal mobile devices
26 and mobile data to carry out their work-related duties, Defendants failed to reimburse them for
27 their costs incurred.

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129. Second, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal vehicles for work purposes, such as obtaining additional ingredients and supplies from other Denny's locations and grocery stores, but failed to reimburse them for all costs of travel, including mileage. For example, on at least three occasions, Plaintiff was required to drive 22 miles roundtrip to another Denny's location in San Diego to obtain food or restaurant supplies. On at least two other occasions, Plaintiff was required to drive about three (3) miles roundtrip to a grocery store to obtain ingredients that the restaurant had run out of. Although Defendants required Plaintiff and class members to utilize their own vehicles to carry out their work-related responsibilities, Defendants did not reimburse them for all of their travel expenses.

130. Third, during the relevant time period, Defendants required Plaintiff and class members to wear uniforms bearing the "Denny's" company logo, including a shirt and apron. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with two shirts at the time of hire, and only provided Plaintiff with one apron at a later date. Because Defendants failed to provide Plaintiff and class members with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and class members had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of food service and restaurant work, Plaintiff's shirts and apron would become sweaty, soiled, and/or acquire an unpleasant odor such that she would be required to wash them more frequently than her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and class members to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

131. Defendants could have provided Plaintiff and class members with the actual equipment for use on the job, such as company mobile devices, company vehicles, and an adequate number of uniform items or access to laundering services; or, Defendants could have reimbursed employees for the costs of their mobile device usage, mileage, and laundering

1 expenses or provided a uniform maintenance allowance. Instead, Defendants passed these
2 operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn
3 at least two (2) times the minimum wage.

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

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

11 **TENTH CAUSE OF ACTION**

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

13 **(Against all Defendants)**

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

16 135. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
18 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 226(a), 226.7,
19 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
20 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
21 violations of those Labor Code sections not found in section 2699.5, including sections 516,
22 1182.12, and 2810.5.

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

- 25 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
26 Wage Order for Defendants' failure to compensate Plaintiff and other
27 aggrieved employees with all required overtime pay, as alleged herein;

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- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the "regular rate" of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other aggrieved employees, as set forth below;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 212 for failure to issue instruments that had sufficient funds for payment of wages, as set forth below;

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- 1 (k) Violation of Labor Code sections 551 and 552 for failure to provide one
2 day's rest in seven, as set forth below;
- 3 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
4 Order for failure to provide suitable seating, as set forth below;
- 5 (m) Violation of Labor Code section 1198 and the applicable IWC Wage
6 Order for failing to pay reporting time pay to Plaintiff and other aggrieved
7 employees, as alleged herein;
- 8 (n) Violation of Labor Code section 1198 and the applicable IWC Wage
9 Order for failure to pay split-shift premiums when Plaintiff and other
10 aggrieved employees returned to work for an additional shift in the same
11 day, after having been clocked out for more than an hour, as set forth
12 below;
- 13 (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
14 and other aggrieved employees for all business expenses necessarily
15 incurred, as alleged herein; and
- 16 (p) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
17 provide written notice of information material to Plaintiff's and other
18 aggrieved employees' employment with Defendants, as set forth below.

19 137. During the relevant time period, Defendants did not pay other aggrieved
20 employees the correct overtime rate for the recorded overtime hours that they generated. In
21 addition to an hourly wage, Defendants paid other aggrieved employees incentive pay,
22 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
23 California Labor Code, Defendants failed to incorporate all compensation, including incentive
24 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
25 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
26 when other aggrieved employees worked overtime and received these other forms of pay,
27 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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1 138. Defendants' failure to compensate Plaintiff and other aggrieved employees with
2 all required overtime pay and Defendants' failure to properly calculate the overtime rates paid
3 to other aggrieved employees is in violation of California Labor Code sections 510 and 1198,
4 and the applicable IWC Wage Order.

5 139. Moreover, Defendants engaged in a company-wide practice and/or policy of not
6 paying full meal and rest period premiums owed when compliant meal or rest periods are not
7 provided. To the extent that Defendants did pay other aggrieved employees one (1) additional
8 hour of premium pay for missed, late, and/or interrupted meal and rest periods, Defendants did
9 not pay other aggrieved employees at the correct rate of pay for premiums because Defendants
10 failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
11 and/or other forms of remuneration, in the regular rate of pay. Defendants' failure to properly
12 calculate the rates of pay for meal and rest period premiums based on all remuneration paid is
13 in violation of California Labor Code sections 226.7 and 1198, and the applicable IWC Wage
14 Order.

15 140. At all times relevant herein, California Labor Code section 212 prohibits
16 employers from issuing any instruments for the payment of wages unless such instruments are
17 negotiable and payable in cash, on demand, and without discount. Moreover, at the time of the
18 issuance of payment and for a reasonable time thereafter, which must be at least 30 days, the
19 maker or drawer must have sufficient funds in, or credit, arrangement, or understanding with
20 the drawee for its payment.

21 141. During the relevant time period, Defendants had a practice and/or policy of
22 issuing paychecks that were improper forms of payment, in that Defendants paid wages to other
23 aggrieved employees by a non-sufficient funds instrument. For example, upon information and
24 belief, other aggrieved employees received their wages via checks which bounced frequently
25 when other aggrieved employees attempted to redeem them within 30 days of their issuance.
26 Thus, Defendants' practice was, and continues to be, unlawful as it did not give other aggrieved
27 employees easy access to the entirety of their wages without discount and without delay and the
28 drawer had insufficient funds for the payment of wages.

1 142. California courts recognize a policy favoring the full and prompt payment of
2 wages to employees. Defendants' practice is inconsistent with this policy because it did not
3 allow other aggrieved employees to access their entire wages without discount and without
4 delay, in violation of California Labor Code section 212.

5 143. At all relevant times herein, California Labor Code section 551 provides that
6 every person employed in any occupation of labor is entitled to one day's rest in seven.
7 Additionally, California Labor Code section 552 prohibits employers from requiring employees
8 to work more than six consecutive days without a day of rest.

9 144. At all relevant times herein set forth, California Labor Code section 556 exempts
10 an employer from the day-of-rest requirement when the total hours worked by an employee do
11 not exceed 30 hours in any week or six hours in any one day thereof.

12 145. During the relevant time period, on information and belief, Defendants scheduled
13 Plaintiff and other aggrieved employees to work eight (6) or more hours per day and seven (7)
14 consecutive days in a workweek. Because Plaintiff and other aggrieved employees worked over
15 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not
16 exempt from the day-of-rest requirement. To the extent that Plaintiff and other aggrieved
17 employees may have signed purported waivers of their right to a day's rest in seven, such
18 waivers are invalid. Thus, Defendants willfully caused Plaintiff and other aggrieved employees
19 to work more than six days in seven, in violation of Labor Code sections 551 and 552.

20 146. At all relevant times herein, California Labor Code section 1198 makes it illegal
21 to employ an employee under conditions of labor that are prohibited by the applicable wage
22 order. California Labor Code section 1198 requires that ". . . the standard conditions of labor
23 fixed by the commission shall be the . . . standard conditions of labor for employees. The
24 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

25 147. California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll
26 working employees shall be provided with suitable seats when the nature of the work reasonably
27 permits the use of seats."

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

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

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

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

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

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

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

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

19 156. As a result of Defendants' company-wide policy and/or practice of prohibiting
20 employees from sitting at any time, even when they were not engaged in active duties requiring
21 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
22 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
23 Defendants' failure to provide suitable seating to Plaintiff and other aggrieved employees
24 violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision
25 14(B).

26 157. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
27 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
28 in addition to the minimum wage for that workday, except when the employee resides at the

1 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work
2 schedule, which is interrupted by non-paid non-working periods established by the employer,
3 other than bona fide rest or meal periods.”

4 158. Defendants willfully violated California Labor Code section 1198 and California
5 Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff
6 and other aggrieved employees a split-shift premium when they returned to work for an
7 additional shift in the same day, after having been clocked out for several hours. For example,
8 Plaintiff was sometimes required to work from 5:00 a.m. to about 12:00 p.m., then told to clock
9 out before returning to work for the dinner shift around 8:00 p.m. the same day. When this
10 occurred, Defendants did not always pay Plaintiff and other aggrieved employees an additional
11 hour at minimum wage. At all relevant times, Plaintiff and other aggrieved employees did not
12 reside at Defendants’ locations. Accordingly, Defendants required Plaintiff and other aggrieved
13 employees to work split shifts but failed to pay them an additional hour at minimum wage, in
14 violation of California Labor Code section 1198.

15 159. Defendants’ failure to provide Plaintiff and other aggrieved employees with split-
16 shift pay when they returned to work for an additional shift in the same day, after having been
17 clocked out for more than an hour, violates California Labor Code section 1198 and California
18 Code of Regulations Title 8, Section 11050(4)(C).

19 160. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
20 to ensure that employers provide employees with basic information material to their
21 employment relationship at the time of hiring, and to ensure that employees are given written
22 and timely notice of any changes to basic information material to their employment. Codified
23 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
24 time of hiring, an employer must provide written notice to employees containing basic and
25 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
26 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
27 any rates for overtime, the regular payday designated by the employer, and any allowances
28 claims as part of the minimum wage, including meal or lodging allowances. Labor Code

1 § 2810.5(a)(1)(A)-(C).

2 161. At all relevant times, on information and belief, Defendants failed, on a
3 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
4 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
5 failure to provide Plaintiff and other aggrieved employees with written notice of basic
6 information regarding their employment with Defendants is in violation of Labor Code section
7 2810.5.

8 162. Therefore, Plaintiff and/or other aggrieved employees are entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **ELEVENTH CAUSE OF ACTION**

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

12 **Unlawful Business Practices**

13 **(Against all Defendants)**

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

16 164. Defendants are “persons” as defined by California Business & Professions Code
17 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
18 associations.

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

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

27 167. A violation of California Business & Professions Code sections 17200, *et seq.*
28 may be predicated on the violation of any state or federal law. In the instant case, Defendants’

1 policies and practices have violated state law in at least the following respects:

- 2 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
3 class members, to work overtime without paying them proper
4 compensation in violation of California Labor Code sections 510 and
5 1198, and the applicable IWC Wage Order, as alleged herein;
- 6 (b) Failing to pay at least minimum wage to Plaintiff and class members in
7 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
8 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
10 members in violation of California Labor Code sections 226.7, 512(a),
11 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (d) Failing to authorize and permit Plaintiff and class members to take
13 uninterrupted rest periods in violation of California Labor Code sections
14 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
15 herein;
- 16 (e) Failing to provide Plaintiff and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation of
18 California Labor Code sections 226(a), 1174(d), and 1198, and the
19 applicable IWC Wage Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204, as alleged herein;
- 22 (g) Failing to provide one day's rest in seven to Plaintiff and class members
23 in violation of California Labor Code sections 551 and 552, as set forth
24 below;
- 25 (h) Failing to pay Plaintiff and class members a split-shift premium wage of
26 an additional hour of pay at the minimum wage, when they returned to
27 work for an additional shift in the same day, after having been clocked
28 out for more than an hour, in violation of California Labor Code section

1198 and the applicable IWC Wage Order, as set forth below;

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

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

(k) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

168. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

169. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

170. During the relevant time period, on information and belief, Defendants scheduled Plaintiff and class members to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. For example, on information and belief, Plaintiff worked seven (7) consecutive days throughout her employment without being afforded the opportunity to take one day's rest. To the extent that Plaintiff and class members may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid. Thus, Defendants willfully caused Plaintiff and class members to work more than six days in seven, in violation of Labor Code sections 551 and 552.

171. At all times relevant herein, Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC

1 Wage Order. California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When
2 an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in
3 addition to the minimum wage for that workday, except when the employee resides at the place
4 of employment.” Plaintiff and class members did not reside at Defendants’ locations.
5 California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is
6 interrupted by non-paid non-working periods established by the employer, other than bona fide
7 rest or meal periods.”

8 172. Defendants violated California Labor Code section 1198 and California Code of
9 Regulations, Title 8, section 11050(4)(C), because Defendants have failed to pay Plaintiff and
10 class members a split-shift premium when they returned to work for an additional shift in the
11 same day, after having been clocked out for more than several hours. For instance, Plaintiff
12 was sometimes required to work from 5:00 a.m. to about 12:00 p.m., then told to clock out
13 before returning to work for the dinner shift around 8:00 p.m. the same day. When this occurred,
14 Defendants did not always pay Plaintiff and class members an additional hour at minimum
15 wage.

16 173. Accordingly, Defendants required Plaintiff and class members to work split
17 shifts but failed to pay them the split-shift premium wage in violation of California Labor Code
18 section 1198. Defendants’ failure to compensate Plaintiff and class members with split-shift
19 pay when they returned to work for an additional shift in the same day, after having been clocked
20 out for more than an hour, violates California Labor Code section 1198 and California Code of
21 Regulations, Title 8, section 11050(4)(C).

22 174. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
23 to ensure that employers provide employees with basic information material to their
24 employment relationship at the time of hiring, and to ensure that employees are given written
25 and timely notice of any changes to basic information material to their employment. Codified
26 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
27 time of hiring, an employer must provide written notice to employees containing basic and
28 material payroll information, including, among other things, the rate(s) of pay and basis thereof,

whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

175. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

176. 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.

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

TWELFTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

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

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

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

1 **PRAYER FOR RELIEF**

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

4 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
5 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
6 reserves the right to 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) hour
13 of pay at each employee's regular rate of pay for each workday that a meal period was not
14 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 ///

1 24. That the Court make an award to the Plaintiff and class members of one (1) hour
2 of pay at each employee's regular rate of pay for each workday that a rest period was not
3 authorized and permitted;

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

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

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

9 28. For attorneys' fees pursuant to California Code of Civil Procedure section
10 1021.5, or as otherwise provided by law; and

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

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

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

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

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

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

22 34. For attorneys' fees and costs pursuant to California Labor Code section
23 226(e)(1); and

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

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

27 36. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,

meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

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

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

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

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

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

As to the Seventh Cause of Action

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

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

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

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

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

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

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As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiff and class members with reporting time pay;
49. For all actual, consequential and incidental losses and damages, according to proof;
50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and
51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;
53. For unpaid business-related expenses and such general and special damages as may be appropriate;
54. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;
55. For all actual, consequential, and incidental losses and damages, according to proof;
56. For attorneys’ fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and
57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to

1 include all forms of remuneration in the “regular rate” of pay for purposes of paying overtime
2 wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by
3 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
4 failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all
5 rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
6 maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
7 termination); 204 (by failing to timely pay all earned wages during employment); 212 (by failing
8 to issue instruments that had sufficient funds for payment of wages); 551 and 552 (by failing to
9 provide one day’s rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide
10 reporting time pay); 1198 and the applicable IWC Wage Order (by failing to pay split-shift
11 premiums); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating);
12 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written
13 notice of information material to employment);

14 59. For civil penalties pursuant to the California Labor Code, including sections 210,
15 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
16 sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194,
17 1197, 1197.1, 1198, 2802, and 2810.5;

18 60. For attorneys’ fees and costs pursuant to California Labor Code section
19 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California
20 Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
21 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

22 61. For pre-judgment and post-judgment interest as provided by law; and for such
23 other and further relief as the Court may deem equitable and appropriate.

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

25 62. That the Court declare, adjudge and decree that Defendants’ conduct of failing
26 to provide Plaintiff and class members all overtime wages due to them, failing to provide
27 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
28 class members all meal periods, failing to authorize and permit Plaintiff and class members to

1 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
2 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
3 to timely pay Plaintiff and class members all earned wages during employment, failing to
4 provide one day's rest in seven, failing to properly compensate Plaintiff and class members for
5 split shifts, failing to pay Plaintiff and class members reporting time pay, failing to reimburse
6 Plaintiff and class members for business-related expenses, and failing to provide written notice
7 of material terms of employment, constitutes an unlawful business practice in violation of
8 California Business and Professions Code sections 17200, *et seq.*;

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

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

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

17 66. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Twelfth Cause of Action**

20 67. That the Court declare, adjudge and decree that Defendants' conduct of denying
21 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
22 unfair business practice in violation of California Business and Professions Code sections
23 17200, *et seq.*;

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

27 69. For the appointment of a receiver to receive, manage, and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

1 Defendants as a result of violations of California Business & Professions Code sections 17200,
2 *et seq.*;

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

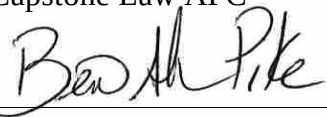
5 71. For pre-judgment and post-judgment interest as provided by law; and

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

8
9 Dated: March 3, 2023

Respectfully submitted,

Capstone Law APC

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12 By: 

Bevin Allen Pike
Daniel Jonathan
Trisha Monesi

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14 Attorneys for Plaintiff Robin Cathey
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EXHIBIT “1”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

September 20, 2022

VIA ONLINE SUBMISSION

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

Subject: *Robin Cathey v. Farooqi Food Management, Inc., et al.*

Dear PAGA Administrator:

This office represents Robin Cathey in connection with her claims under the California Labor Code. Ms. Cathey was an employee of FAROOQI FOOD MANAGEMENT, INC.; FAROOQI RESTAURANT MANAGEMENT, INC.; N FAROOQI ENTERPRISES, LLC; and/or N FAROOQI PROPERTIES, LLC. For the purpose of this letter, Ms. Cathey collectively refers to these entities as “FFM.”

The employers may be contacted directly at the addresses below:

FAROOQI FOOD MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121

FAROOQI RESTAURANT MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121

N FAROOQI ENTERPRISES, LLC
6080 MISSION GORGE RD
SAN DIEGO, CA 92120

N FAROOQI PROPERTIES, LLC
6080 MISSION GORGE RD
SAN DIEGO, CA 92120

Ms. Cathey 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. Cathey seeks relief on behalf of herself, the State of California, and other persons who are or were employed by FFM 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.

FFM employed Ms. Cathey as an hourly paid, non-exempt employee from approximately November 2017 to October 2021. Ms. Cathey worked for FFM as a Server at its restaurant location in Del Mar, California. During her employment, Ms. Cathey typically worked ten (10) to twelve (12) hours or more per day and six (6) days per week. At the time Ms. Cathey’s employment with FFM ended, she

earned \$14.00 per hour. Her job duties included, without limitation, seating customers, taking and bringing customer orders, cleaning work areas and dining room, handling customer complaints, and training new employees.

FFM committed one or more of the following Labor Code violations against Ms. Cathey, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

FFM’s Company-Wide and Uniform Payroll and HR Practices

FAROOQI FOOD MANAGEMENT, INC.; FAROOQI RESTAURANT MANAGEMENT, INC.; N FAROOQI ENTERPRISES, LLC; and N FAROOQI PROPERTIES, LLC are California corporations and California limited liability companies. Together, they own and operate approximately six (6) franchise Denny’s and Jack in the Box restaurants in California. Upon information and belief, FFM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for FFM in California, including Ms. Cathey and other aggrieved employees. At all relevant times, FFM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Cathey and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Ms. Cathey’s experience and counsel’s review of those records currently available relating to Ms. Cathey’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. Cathey 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.

FFM willfully failed to pay all overtime wages owed to Ms. Cathey and other aggrieved employees. During the relevant time period, Ms. Cathey 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 period, FFM had, and continues to have, a company-wide practice and/or policy of discouraging and impeding Ms. Cathey and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, as well as improperly adjusting Ms. Cathey's and other aggrieved employees' clock-in and/or clock-out duration times in its timekeeping system, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual and its time-shaving policy was based on a company-wide policy of staffing restaurant locations strictly based on the labor hours or labor budget set by corporate. These policies, coupled with FFM's understaffing policy and assignment of heavy workloads (see *infra*), led Ms. Cathey and other aggrieved employees to work off-the-clock outside of scheduled shift times in order to complete their assigned tasks.

Second, as a result of this restriction on overtime accrual, FFM forced Ms. Cathey and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts. For example, because FFM's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Cathey and other aggrieved employees would often have to wait at least several minutes to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. Moreover, due to understaffing, Ms. Cathey was often the only server on her shift, which frequently prevented her from clocking in until she had already performed work for 10-15 minutes, because customers were waiting to be seated, have their orders taken, or get cashed out as soon as she entered the premises. As another example, Ms. Cathey was required to complete errands and participate in COVID-19 health screenings before clocking in. On at least three (3) occasions, Ms. Cathey drove for approximately 30 mins to and from other FFM-owned Denny's locations to pick up ingredients and/or supplies before being able to clock in. As stated, Ms. Cathey was also required to undergo pre-shift temperature checks, time for which she was not paid, which took about five (5) minutes per instance. Furthermore, FFM's management would also call and send text messages to Ms. Cathey on her personal cellular phone on her days off and while otherwise off-the-clock, regarding customer tickets, staffing issues, and other work-related matters. Finally, several times during her employment, Ms. Cathey was required to complete training modules off-the-clock on a work computer, time for which she was not paid. Thus, FFM failed to track this time spent working before or after scheduled shifts or on their off-days, and Ms. Cathey and other aggrieved employees received no compensation for this time.

Third, as stated, FFM pressured Ms. Cathey and other aggrieved employees to clock out at the end of their scheduled shift times, but to continue working, in order to strictly limit the amount of overtime pay FFM would otherwise owe. Thus, Ms. Cathey and other aggrieved employees performed work after the end of their shifts for which they were not paid. For example, Ms. Cathey often worked up to two (2) hours after clocking out because the restaurant was understaffed, had a high volume of customers, and management would admonish employees if they remained clocked in after working eight (8) hours. Moreover, as stated, on information and belief, FFM engaged in a policy and/or practice of altering time records at the discretion of management. For example, FFM's management would adjust Ms. Cathey's and other aggrieved employees' clock-in and/or clock-out duration times and delete time recorded outside of their scheduled shifts to avoid having to pay overtime wages. As

a result of FFM's policy and/or practice, Ms. Cathey and other aggrieved employees were not paid overtime wages for all overtime hours incurred.

Fourth, as stated, FFM's policy and/or practice of labor budgeting and/or limited payroll allocation has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Because FFM 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. Cathey 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, FFM had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which further caused Ms. Cathey and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. Cathey 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.

Furthermore, FFM utilized a timekeeping system that automatically shut down the POS machines that employees used to input the customer orders at the fifth hour of each employee's shift (if they had not yet clocked out for their meal period) in order to strictly limit the meal penalties that FFM would otherwise owe. Indeed, FFM's timekeeping system would render the POS machines inoperable unless the employees due for a meal period had clocked out, resulting in employees being forced to clock out just prior to their fifth hour of work and record compliant meal periods, regardless of whether these employees had actually received compliant meal periods, in order to keep the POS system functioning. Moreover, FFM's managers pressured Ms. Cathey and other aggrieved employees to continue working even when clocked out for a meal period. As a result, Ms. Cathey was forced by FFM's management and the POS system to clock out for her meal period by the fifth hour of her shift but continued working through her entire meal period due to the chronic understaffing of the restaurant. Consequently, Ms. Cathey and other aggrieved employees performed work during meal periods for which they were not paid.

FFM knew or should have known that as a result of these company-wide practices and/or policies, Ms. Cathey and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Cathey 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, FFM 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, FFM paid other aggrieved employees hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FFM failed to incorporate all compensation, including hazard pay, 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, FFM failed to pay all overtime wages by paying a lower overtime rate than required.

FFM's failure to pay Ms. Cathey 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. Cathey 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 Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

First, as stated, due to FFM's restrictions on overtime accrual, FFM systematically failed to record all hours worked, and Ms. Cathey and other aggrieved employees were forced to work off-the-clock before and/or after their scheduled shifts to complete their assigned duties, including attending to customers, traveling to FFM's other restaurant locations to pick up ingredients/supplies, undergoing health screenings, responding to phone calls and/or text messages from managers, and completing mandatory online training modules. However, FFM failed to compensate Ms. Cathey and other aggrieved employees at least minimum wages for the time they spent performing work-related tasks before and after their scheduled shift times. As also stated, on information and belief, FFM had, and continues to have, a company-wide policy of adjusting or shaving down Ms. Cathey's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system, further resulting in the failure to pay Ms. Cathey and other aggrieved employees minimum wages for all hours actually worked.

Second, as set forth above, due to FFM's company-wide practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Cathey 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. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, FFM's integrated POS and timekeeping system forced employees to clock out by the fifth hour of their shift to reflect compliant meal periods, but FFM's management pressured employees to continue working, time for which they were not paid. Thus, FFM systematically failed to pay Ms. Cathey and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

First, as stated above, on information and belief, FFM had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and a failure to schedule and/or adhere to a schedule for meal periods, has resulted in a lack of meal period coverage. Consequently, Ms. Cathey and other aggrieved employees were required to work through and/or had their meal periods interrupted in order to complete their assigned duties and handle customer demand. Thus, Ms. Cathey and other aggrieved employees missed their meal periods entirely, had their meal periods cut short to return to work, or waited extended periods of time before taking meal periods.

Second, as stated, in order to prevent Ms. Cathey and other aggrieved employees from incurring meal period penalties that FFM would otherwise owe, FFM's timekeeping system automatically shut down the point of sale ("POS") machines that employees used to input the customer orders at the fifth hour of each employee's shift (if they had not yet clocked out for their meal period) in order to strictly limit the meal penalties that would need to be paid by FFM. Indeed, as stated, FFM's timekeeping system would render the POS machines inoperable unless the employees due for a meal period had clocked out, resulting in employees being forced to clock out just prior to their fifth hour of work and record compliant meal periods, regardless of whether these employees had actually received compliant meal periods, in order to keep the POS system functioning. Moreover, FFM's managers pressured Ms. Cathey and other aggrieved employees to continue working even when clocked out for a meal period. As a result, Ms. Cathey was forced by FFM's management and the POS system to clock out for her meal period by the fifth hour of her shift but continued working through her entire meal period due to the chronic understaffing of the restaurant. As a result, Ms. Cathey would not receive compliant meal periods.

As a result, Ms. Cathey and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Ms. Cathey missed her meal periods entirely because of FFM's policy and/or practice of understaffing while assigning heavy workloads.

Moreover, FFM did not provide Ms. Cathey and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Cathey worked shifts in excess of 10 hours in one day at least five (5) days per week and missed all second 30-minute meal periods to which she was entitled. Ms. Cathey 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.

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

Furthermore, FFM 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. Cathey and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that FFM did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, FFM did not pay other aggrieved employees at the correct rate of pay for premiums because FFM systematically failed to include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FFM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Cathey 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, FFM regularly failed to authorize and permit Ms. Cathey 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, FFM's company-wide use of labor budgeting and/or

limited payroll allocation, understaffing, and assignment of heavy workloads, prevented Ms. Cathey and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, FFM also failed to schedule rest periods at all, which, coupled with FFM's failure to provide adequate rest period coverage, further led to Ms. Cathey and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, FFM maintained a company-wide on-premises rest period policy, which mandated that Ms. Cathey and other aggrieved employees remain on or near FFM's premises during their rest periods. Because Ms. Cathey 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, FFM effectively maintained control over Ms. Cathey and other aggrieved employees during rest periods.

As a result, Ms. Cathey 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. Cathey had to forego almost all of her rest periods because of the heavy workload.

FFM 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. Cathey and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that FFM did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, FFM did not pay other aggrieved employees at the correct rate of pay for premiums because FFM failed to include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FFM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Cathey 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, FFM has knowingly and intentionally provided Ms. Cathey and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FFM issued uniform wage statements to Ms. Cathey 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, FFM violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because FFM did not record the time Ms. Cathey 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), FFM did not list the correct amount of gross wages and net wages earned by Ms. Cathey and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FFM failed to accurately list the total number of hours worked by Ms. Cathey 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).

Second, because FFM did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, FFM did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, FFM also failed to list the correct amount of net wages in violation of section 226(a)(5). FFM 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).

Third, and separately from these violations, FFM issued uniform wage statements to Ms. Cathey 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. During the relevant time period, FFM systematically, and on a company-wide basis, issued wage statements to Ms. Cathey and other aggrieved employees that only give the city, state, and zip code of the employer's address, incompletely listing FFM's address as "San Diego, CA 92121." FFM also issued wage statements to Ms. Cathey and other aggrieved employees that fail to list the employing entity's address at all. For example, on information and belief, FFM uniformly failed to list the employing entity's address on Ms. Cathey's and other aggrieved employees' final wage statements, including Ms. Cathey's wage statement dated October 14, 2021.

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), FFM willfully failed to maintain accurate payroll records for Ms. Cathey 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, FFM 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/or meal period start and end times for Ms. Cathey and other aggrieved employees in violation of section 1198. Furthermore, in light of FFM’s failure to provide Ms. Cathey and other aggrieved employees with second 30-minute meal periods to which they were entitled, FFM kept no records of meal start and end times for second meal periods.

Because FFM failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Cathey 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. Cathey 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. Cathey 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, FFM failed to pay Ms. Cathey and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest

period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Cathey 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.

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

Ms. Cathey 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 – Payment of Wages by Non-Sufficient Funds Instrument

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. Moreover, at the time of the issuance of payment and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer must have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

During the relevant time period, FFM had a practice and/or policy of issuing paychecks that were improper forms of payment, in that FFM paid wages to other aggrieved employees by a non-sufficient funds instrument. For example, upon information and belief, other aggrieved employees received their wages via checks which bounced frequently when other aggrieved employees attempted to redeem them within 30 days of their issuance. Thus, FFM's practice was, and continues to be, unlawful as it did not give other aggrieved employees easy access to the entirety of their wages without discount and without delay and the drawer had insufficient funds for the payment of wages.

California courts recognize a policy favoring the full and prompt payment of wages to employees. FFM's practice is inconsistent with this policy because did not allow other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code section 212. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 203.1, 225.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day’s Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day’s rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, FFM required Ms. Cathey and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, on information and belief, Ms. Cathey worked seven (7) consecutive days throughout her employment without being afforded the opportunity to take one day’s rest. Because Ms. Cathey and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Cathey and other aggrieved employees signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

Thus, FFM caused Ms. Cathey and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Cathey 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 § 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.*

FFM’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. FFM 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, FFM 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.

FFM 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. FFM'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 FFM'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. FFM'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 FFM 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 her 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 she or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

FFM'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 Ms. Cathey and other aggrieved employees during lulls in operation. FFM could provide Ms. Cathey and other aggrieved employees with a seat or stool at in its work areas, but instead denies employees seating and forces other Ms. Cathey and other aggrieved employees to stand throughout the day.

FFM did not provide Ms. Cathey and 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 Ms. Cathey and other aggrieved employees engaged in duties in which the nature of the work required standing, FFM denied them the use of seats nearby during lulls in their work duties. Moreover, FFM did not inform Ms. Cathey and other aggrieved employees of their rights to a seat or stool under California law.

As a result of FFM'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, Ms. Cathey and other aggrieved employees were forced to stand during shifts and denied seats. FFM's failure to provide suitable seating to Ms. Cathey and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Ms. Cathey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring FFM 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 5(A) – Failure to Pay Reporting Time Pay

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

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

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

FFM had a company-wide practice of sending Ms. Cathey and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Cathey and other aggrieved employees for half of their usual or scheduled shift. For example, at least twelve (12) times throughout her employment, FFM's managers sent Ms. Cathey home before half of her scheduled shift was over, but, on information and belief, Ms. Cathey was only paid for the time she had worked. Although Ms. Cathey and other aggrieved employees would report to work based on the schedule that FFM provided to them, FFM would send them home before they had worked at least half of their usual or scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Cathey and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

California Code of Regulations, Title 8, section 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

FFM willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because FFM failed to pay Ms. Cathey and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than several hours. For example, Ms. Cathey was sometimes required to work from 5:00 a.m. to about 12:00 p.m., then told to clock out before returning to work for the dinner shift around 8:00 p.m. the same day. When this occurred, FFM did not always pay Ms. Cathey and other aggrieved employees an additional hour at minimum wage. Accordingly, FFM required Ms. Cathey and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

FFM's failure to provide Ms. Cathey and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Ms. Cathey and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, FFM, on a company-wide basis, required Ms. Cathey 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, FFM contacted Ms. Cathey on her personal mobile device to discuss work-related issues and ask questions pertaining to customer tickets, staffing issues, and other matters. Although FFM required Ms. Cathey and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, FFM failed to reimburse them for their costs incurred.

Second, FFM had a company-wide policy of requiring Ms. Cathey and other aggrieved employees to utilize their own personal vehicles for work purposes, such as obtaining additional ingredients and supplies from other FFM-owned Denny's locations and grocery stores, but failed to reimburse them for all costs of travel, including mileage. For example, on at least three occasions, Ms. Cathey was required to drive 22 miles roundtrip to another Denny's location in San Diego to obtain food or restaurant supplies. On at least two other occasions, Ms. Cathey was required to drive about three (3) miles roundtrip to a grocery store to obtain ingredients that the restaurant had run out of. Although FFM required Ms. Cathey and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, FFM did not reimburse them for their travel expenses.

Third, during the relevant time period, FFM required Ms. Cathey and other aggrieved employees to wear uniforms bearing the “Denny's” company logo, including a shirt and apron. However, FFM did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, FFM only provided Ms. Cathey with two shirts at the time of hire, and only provided Ms. Cathey with one apron at a later date. Because FFM failed to provide Ms. Cathey and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Cathey and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of food service and restaurant work, Ms. Cathey's uniform items would become sweaty, soiled, and/or acquire an unpleasant odor such that she would be required to wash her uniform items more frequently than her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, FFM failed to maintain uniforms they required Ms. Cathey and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

FFM could have provided Ms. Cathey and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and an adequate number of uniform items or access to laundering services. Or, FFM could have reimbursed employees for the cost of their mobile device usage, mileage, their laundering expenses or provided a uniform maintenance allowance. Instead, FFM passed these operating costs off onto Ms. Cathey and other aggrieved employees.

Thus, FFM 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. Cathey 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

FFM failed to provide Ms. Cathey and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). FFM's failure to provide Ms. Cathey and other aggrieved employees with written notice of basic information regarding their employment with FFM is in violation of Labor Code section 2810.5.

Ms. Cathey 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." FFM, at all relevant times, was an employer or person acting on behalf of an employer(s) who

violated Ms. Cathey's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Cathey 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. Cathey, 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 FFM for violations of California Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Cathey 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Mao Shiokura', with a stylized flourish at the end.

Mao Shiokura

Copy: FAROOQI FOOD MANAGEMENT, INC. (via U.S. Certified Mail); FAROOQI RESTAURANT MANAGEMENT, INC. (via U.S. Certified Mail); N FAROOQI ENTERPRISES, LLC (via U.S. Certified Mail); N FAROOQI PROPERTIES, LLC (via U.S. Certified Mail)

CAPSTONE LAW APC

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Instructions

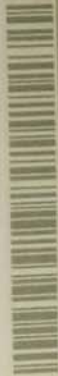
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2. AUG 03 09 40 21 71 46 6 12 17 22 13 20 01 2

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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 ☐ No
If YES, enter delivery address below:

Service Type ☐ Priority Mail Express®
Adult Signature ☐ Registered Mail™
Adult Signature Restricted Delivery ☐ Registered Mail Restricted Delivery
Certified Mail® ☐ Signature Confirmation™
Collect on Delivery ☐ Signature Confirmation Restricted Delivery
Collect on Delivery Restricted Delivery ☐ Restricted Delivery
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Los Angeles, CA. 90067



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☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
Postmark _____
Date _____

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MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121

29EE 9062 0000 0762 2202

FAROOQI RESTAURANT
MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121

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FAROOQI RESTAURANT
MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121



2. 10550-0940 217766 10120-15 10-85

7022 2410 0000 2406 3362

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
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- 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[™]
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6080 MISSION GORGE RD
SAN DIEGO, CA 92120

N FAROOQI ENTERPRISES, LLC
6080 MISSION GORGE RD
SAN DIEGO, CA 92120

N FAROOQI ENTERPRISES, LLC
6080 MISSION GORGE RD
SAN DIEGO, CA 92120

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- ☐ 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.

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 ☐ No
If YES, enter delivery address below:

Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery



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

☒ Return Receipt (hardcopy) \$

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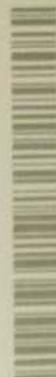
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SAN DIEGO, CA 92120

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6080 MISSION GORGE RD
SAN DIEGO, CA 92120

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N FAROOQI PROPERTIES, LLC
6080 MISSION GORGE RD
SAN DIEGO, CA 92120



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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		

Service Type	☐ Priority Mail Express®
Adult Signature	☐ Registered Mail™
Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery
Signature Confirmation™	☐ Signature Confirmation™
Collect on Delivery	☐ Signature Confirmation Restricted Delivery
Collect on Delivery Restricted Delivery	☐ Restricted Delivery
Insured Mail	
Insured Mail Restricted Delivery	

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SENDER: COMPLETE THIS SECTION

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FAROOQI RESTAURANT
MANAGEMENT, INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121



2. Address Number (Transfer from service label)

7022 2410 0000 2406 3362

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

Service Type

Adult Signature

Adult Signature Restricted Delivery

Certified Mail®

Certified Mail Restricted Delivery

Collect on Delivery

Collect on Delivery Restricted Delivery

Mail
Mail Restricted Delivery
(0)

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

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SENDER: COMPLETE THIS SECTION

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INC.
6908 MIRAMAR RD
SAN DIEGO, CA 92121



2. Address Number (Transfer from service label)

7022 2410 0000 2406 3331

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

Service Type

Adult Signature

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Collect on Delivery

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 3, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

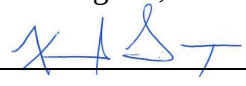
Matthew C. Sgnilek (SBN: 235299)
msgnilek@ohaganmeyer.com
Andrea Rosenkranz (SBN: 01559)
arosenkranz@ohaganmeyer.com
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, CA 92626
Tel.: (949) 942-8500
Fax: (949) 942-8510

Attorneys for Defendants
FAROOQI FOOD MANAGEMENT, INC.

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY ELETRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 3, 2023**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature