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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN JOAQUIN
12

13 LESLIE DEL RIO, as an aggrieved
employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
State of California and other non-party
15 Aggrieved Employees,

16 Plaintiff,

17 vs.

18 DESMOND FOODS, L.P., a California
limited partnership; DESMOND FOODS
19 MANAGEMENT, LLC, a California
limited liability company; JEM
20 RESTAURANT MANAGEMENT
CORPORATION, a California corporation;
21 PENINSULA FOODS, L.P., a California
limited partnership; WENDY'S
22 OPERATORS OF CENTRAL
CALIFORNIA, INC., a California nonprofit
23 corporation; WENDY'S OF SANTA
CLARA, INC., a California corporation;
24 and DOES 1 through 10, inclusive,

25
26 Defendants.
27
28

FILED
SUPERIOR COURT

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STEPHANIE BOHRER, CLERK

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BY _____
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Case No.: STK-CV-UOE-2025-6967

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

(1) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698,
et seq.

Jury Trial Demanded

1 Plaintiff Leslie Del Rio, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on May 23, 2025, until judgment (“non-party Aggrieved Employees”). Plaintiff’s
13 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.
14

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. 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 given that the State of
23 California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying
24 diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013).
25 *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy
26 requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot
27 be established when Plaintiff’s share of the civil penalties attributable to violations personally
28 suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004,” authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Leslie Del Rio is a resident of Stockton, in San Joaquin County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately July 2024 to April 2025 as a Crew Member and Supervisor at their Wendy's restaurant located in Stockton, California (725 W. Hammer Lane, Stockton, California 95210). During her employment, Plaintiff typically worked eight (8) or more hours per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, supervising employees, operating the cash register, taking inventory, preparing the restaurant for visits from Wendy's corporate officers, and preparing food orders.

7. DESMOND FOODS, L.P. was and is, upon information and belief, a California limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. DESMOND FOODS MANAGEMENT, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. JEM RESTAURANT MANAGEMENT CORPORATION was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

10. PENINSULA FOODS, L.P. was and is, upon information and belief, a California limited partnership, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

1 11. WENDY'S OPERATORS OF CENTRAL CALIFORNIA, INC. was and is,
2 upon information and belief, a California nonprofit corporation, and at all times hereinafter
3 mentioned, an employer whose employees are engaged throughout this county and the State of
4 California.

5 12. WENDY'S OF SANTA CLARA, INC. was and is, upon information and belief,
6 a California corporation, and at all times hereinafter mentioned, an employer whose employees
7 are engaged throughout this county and the State of California.

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

12 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of Defendants at all relevant times.

14 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, DESMOND FOODS,
16 L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM RESTAURANT MANAGEMENT
17 CORPORATION; PENINSULA FOODS, L.P.; WENDY'S OPERATORS OF CENTRAL
18 CALIFORNIA, INC.; WENDY'S OF SANTA CLARA, INC.; and/or DOES 1 through 10
19 (collectively, "Defendants" or "WENDY'S"), each acting as the agent, employee, alter ego,
20 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
21 acting within the course and scope of such agency, employment, joint venture, or concerted
22 activity with legal authority to act on the others' behalf. The acts of any and all Defendants
23 were in accordance with, and represent, the official policy of Defendants.

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

28 17. Plaintiff is informed and believes, and thereon alleges, that each of said

Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

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

19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;
- (b) jointly exercised meaningful control over Plaintiff’s and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;
- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared

1 the power to set the wages of Plaintiff and other non-party Aggrieved
2 Employees and determined their working conditions, and who jointly
3 reaped the benefits from the underpayment of their wages and
4 noncompliance with other statutory provisions governing their
5 employment.

6 20. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
7 there has existed a unity of interest and ownership between Defendants such that any
8 individuality and separateness between the entities has ceased.

9 21. DESMOND FOODS, L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM
10 RESTAURANT MANAGEMENT CORPORATION; PENINSULA FOODS, L.P.; WENDY'S
11 OPERATORS OF CENTRAL CALIFORNIA, INC.; WENDY'S OF SANTA CLARA, INC.;
12 and DOES 1 through 10 are therefore alter egos of each other.

13 22. Adherence to the fiction of the separate existence of Defendants would permit an
14 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
15 liability for the wrongful acts committed by them under the name "WENDY'S."

16 23. Plaintiff further alleges, upon information and belief, that Defendants
17 DESMOND FOODS, L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM
18 RESTAURANT MANAGEMENT CORPORATION; PENINSULA FOODS, L.P.; WENDY'S
19 OPERATORS OF CENTRAL CALIFORNIA, INC.; and WENDY'S OF SANTA CLARA,
20 INC. are alter egos of each other for the following reasons:

21 (a) On the California Secretary of State's website
22 (<https://bizfileonline.sos.ca.gov/>), DESMOND FOODS, L.P.;
23 DESMOND FOODS MANAGEMENT, LLC; JEM RESTAURANT
24 MANAGEMENT CORPORATION; PENINSULA FOODS, L.P.;
25 WENDY'S OPERATORS OF CENTRAL CALIFORNIA, INC.; and
26 WENDY'S OF SANTA CLARA, INC. have the same principal address,
27 "312 W CROMWELL FRESNO, CA 93711";

28 (b) On the California Secretary of State's website, DESMOND FOODS,

1 L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM
2 RESTAURANT MANAGEMENT CORPORATION; and WENDY'S
3 OF SANTA CLARA, INC. have the same mailing address, "312 W
4 CROMWELL FRESNO, CA 93711";

5 (c) According to their most recent "Statement of Information" forms filed
6 with the California Secretary of State, DESMOND FOODS
7 MANAGEMENT, LLC, JEM RESTAURANT MANAGEMENT
8 CORPORATION, and WENDY'S OF SANTA CLARA, INC. share the
9 same officers, directors, and/or managers or members including, but not
10 limited to:

11 (i) Howard J. Demera, who serves as manager/member for
12 DESMOND FOODS MANAGEMENT, LLC, Director for
13 JEM RESTAURANT MANAGEMENT CORPORATION,
14 and Chief Executive Officer and Director for WENDY'S OF
15 SANTA CLARA, INC.;

16 (ii) Margaret A. Hughes, who serves as Secretary and Director for
17 JEM RESTAURANT MANAGEMENT CORPORATION
18 and WENDY'S OF SANTA CLARA, INC.; and

19 (iii) Joan D. Gaskins, who serves as Director for JEM
20 RESTAURANT MANAGEMENT CORPORATION and
21 Chief Financial Officer and Director for WENDY'S OF
22 SANTA CLARA, INC.;

23 (d) On the California Secretary of State's website, DESMOND FOODS,
24 L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM
25 RESTAURANT MANAGEMENT CORPORATION; PENINSULA
26 FOODS, L.P.; and WENDY'S OF SANTA CLARA, INC. share the same
27 agent for service of process, LOREAN HAUPT; and

28 (e) On information and belief, DESMOND FOODS, L.P.; DESMOND

FOODS MANAGEMENT, LLC; JEM RESTAURANT MANAGEMENT CORPORATION; PENINSULA FOODS, L.P.; WENDY'S OPERATORS OF CENTRAL CALIFORNIA, INC.; and WENDY'S OF SANTA CLARA, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

24. Defendants own and operate a chain of Wendy's franchise restaurants, with approximately 33 restaurants in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Fresno, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

25. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

26. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Fresno, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

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

1 California.

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

6 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
7 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
8 were not recorded.

9 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 receive certain wages for overtime compensation and that they were not receiving certain wages
12 for overtime compensation.

13 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive at least minimum wages for compensation and that they were not receiving at least
16 minimum wages for work that was required to be done off-the-clock. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
18 least minimum wages for work done off-the-clock.

19 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
22 payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
24 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
25 additional hour of pay at their regular rates of pay when they did not receive a timely,
26 uninterrupted, thirty (30) minute meal period.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest

1 periods in accordance with the California Labor Code and applicable IWC Wage Order or
2 payment of one (1) additional hour of pay at their regular rates of pay when they were not
3 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
4 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
5 provided with payment of one (1) additional hour of pay at their regular rates of pay when they
6 were not authorized and permitted to take a compliant rest period.

7 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 receive complete and accurate wage statements in accordance with California law. In violation
10 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
11 provided complete and accurate wage statements.

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

16 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 timely payment of all wages earned upon termination of employment. In violation of the
19 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
20 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
21 and/or meal and rest period premiums, within permissible time periods.

22 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 timely payment of wages during their employment. In violation of the California Labor Code,
25 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
26 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
27 premiums, within permissible time periods.

28 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive full reimbursement for all business-related expenses and costs they incurred during the
3 course and scope of their employment and that they did not receive full reimbursement of
4 applicable business-related expenses and costs incurred.

5 39. 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 other non-party Aggrieved Employees for all hours worked, and that Defendants had the
8 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
9 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
10 were properly denied wages, all in order to increase Defendants' profits.

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

17 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
18 "any person who was employed by the alleged violator and personally suffered each of the
19 violations alleged."

20 42. Plaintiff and other current and former employees of Defendants are "aggrieved
21 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants' current
22 or former employees and each of the alleged violations were committed against them.

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

- 26 (a) The aggrieved employee shall give written notice by online filing
27 (hereinafter "Employee's Notice") to the LWDA and by certified mail to
28 the employer of the specific provisions of the California Labor Code

1 alleged to have been violated, including the facts and theories to support
2 the alleged violations.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be accompanied
5 by a filing fee of seventy-five dollars (\$75).

6 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
7 employer and the aggrieved employee by certified mail that it does not
8 intend to investigate the alleged violation within sixty (60) calendar days
9 of the postmark date of the Employee's Notice. Upon receipt of the
10 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
11 (65) calendar days of the postmark date of the Employee's Notice, the
12 aggrieved employee may commence a civil action pursuant to California
13 Labor Code section 2699 to recover civil penalties in addition to any other
14 penalties to which the employee may be entitled.

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

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

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(c) and any employer response to that notice shall be accompanied
25 by a filing fee of seventy-five dollars (\$75).

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

1 employee or representative and the agency if the alleged violation is
2 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 employee may commence a civil
5 action pursuant to Section 2699.

6 45. On May 23, 2025, Plaintiff provided written notice by online filing to the LWDA
7 and by certified mail to Defendants of the specific provisions of the California Labor Code
8 alleged to have been violated, including facts and theories to support the alleged violations, in
9 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
10 accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA
11 Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA
12 Case Number LWDA-CM-1100922-25. A true and correct copy of Plaintiff's written notice to
13 the LWDA and Defendants is attached hereto as "Exhibit 1."

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

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

21 48. 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.” Plaintiff, acting in the public interest as a private attorney
2 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
3 herself, all other non-party Aggrieved Employees, and the State of California against
4 Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable
5 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
6 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
7 of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

8 49. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
10 Employees’ rights by violating various sections of the California Labor Code as set forth above.

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

14 51. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
15 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
16 interest as a private attorney general, seeks assessment and collection of civil penalties and
17 injunctive relief for herself, all other non-party Aggrieved Employees, and the State of
18 California against Defendants for violations of California Labor Code sections 201, 202, 204,
19 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

20 **FIRST CAUSE OF ACTION**

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

22 **(Against all Defendants)**

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

25 53. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil
26 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
27 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198.
28 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil

1 penalties for violations of those Labor Code sections not found in section 2699.5, including
2 sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, and 2802.

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

- 5 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
6 Wage Order for Defendants' failure to compensate Plaintiff and other
7 non-party Aggrieved Employees with all required overtime pay, as set
8 forth below;
- 9 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to compensate
11 Plaintiff and other non-party Aggrieved Employees with at least
12 minimum wages for all hours worked, as set forth below;
- 13 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other non-party Aggrieved Employees with meal periods, as set forth
16 below;
- 17 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
18 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
19 and other non-party Aggrieved Employees to take rest periods, as set forth
20 below;
- 21 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and other non-party Aggrieved Employees, as set
24 forth below;
- 25 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
26 IWC Wage Order for failure to maintain payroll records, as set forth
27 below;
- 28 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned

wages upon termination, as set forth below;

(h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below; and

(i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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.”

56. 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.

57. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

58. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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.

59. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
3 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
4 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
5 the seventh (7th) day of work.

6 60. During the relevant time period, Defendants willfully failed to pay all overtime
7 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
8 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
9 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
10 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
11 not recorded.

12 61. First, during the relevant time period, Defendants had, and continue to have, a
13 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
14 Employees to perform work off-the-clock in order to limit the amount of overtime employees
15 could accrue. On information and belief, this limitation on overtime accrual was based on a
16 company-wide policy of staffing locations strictly based on the labor hours or labor budget set
17 by corporate. This policy of limiting overtime, coupled with Defendants' practice of
18 understaffing and/or single-staffing certain positions and assigning heavy workloads (*see infra*),
19 led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before and after
20 their scheduled shifts. Plaintiff, for instance, was required to communicate with management
21 and employees of Defendants' other restaurant locations to coordinate the pickup of supplies
22 needed at Plaintiff's restaurant location before clocking in for her shifts. Furthermore, Plaintiff
23 was required to travel to Defendants' other restaurant locations to pick up supplies before
24 clocking in approximately three (3) times per week, which would take approximately 20-40
25 minutes per instance, depending on which restaurant(s) she had to travel to. Thus, Plaintiff and
26 other non-party Aggrieved Employees performed work that was not recorded, time for which
27 they were not paid.

28 62. Second, during the relevant time period, upon information and belief,

1 Defendants' uniform use of labor budgeting, understaffing, and/or single-staffing certain
2 positions resulted in a failure to provide Plaintiff and other non-party Aggrieved Employees
3 with adequate meal period coverage, such that there were too few employees on duty to handle
4 the workload and attend to customers. Because Defendants did not employ or staff a sufficient
5 number of employees to meet customer demand, there was no one available to relieve
6 employees needing meal period coverage, and Plaintiff and other non-party Aggrieved
7 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
8 they were entitled to receive a meal period.

9 63. Third, Defendants had, and continue to have, a company-wide policy requiring
10 that at least one "Manager on Duty" (MOD) be present in the restaurant at all times, yet
11 Defendants would sometimes only schedule one (1) MOD per shift, due to labor budget
12 restrictions. For example, during the relevant time period, Plaintiff was sometimes the only
13 managerial employee staffed during certain shifts and, as such, was the only employee on duty
14 who was authorized to perform certain tasks such as processing customer transactions involving
15 large denomination bills. Thus, while clocked out for her meal periods, Plaintiff was required
16 to remain on the premises as the MOD and would have her meal periods interrupted or cut short
17 to handle these customer transactions. Defendants' policies combined to create a de facto on-
18 premises meal period policy and a lack of meal period coverage. Defendants also had a practice
19 of failing to adhere to a schedule for meal periods, which further caused Plaintiff and other non-
20 party Aggrieved Employees to not be relieved of their duties for compliant meal periods.
21 Defendants did not pay Plaintiff and other non-party Aggrieved Employees for the time they
22 continued to perform tasks during their meal periods.

23 64. Fourth, on information and belief, because Defendants frowned upon employees
24 accruing meal period premiums, Defendants' management pressured employees to clock out for
25 meal periods to reflect compliant meal periods, upon threat of discipline, even when they did
26 not receive a compliant meal period. Thus, Defendants did not record all hours worked during
27 meal periods, and Plaintiff and other non-party Aggrieved Employees performed work during
28 meal periods for which they were not paid.

1 65. Defendants knew or should have known that as a result of these company-wide
2 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
3 their assigned duties off-the-clock outside of their shifts and during meal periods, and were
4 suffered or permitted to perform work for which they were not paid. Because Plaintiff and other
5 non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or forty (40)
6 hours a week or more, some of this off-the-clock work qualified for overtime premium pay.
7 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
8 for all of the overtime hours they actually worked.

9 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 the balance of overtime compensation as required by California law, violates the provisions of
11 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
13 and/or 2699(a), (f), and (k).

14 **FAILURE TO PAY MINIMUM WAGES**

15 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

16 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
17 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
18 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
19 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
20 an employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8,
22 § 11050(2)(M) (defining "Hours Worked").

23 68. Due to Defendants' policies and/or practices of labor budgeting and limiting the
24 amount of overtime employees could accrue, Defendants required Plaintiff and other non-party
25 Aggrieved Employees to perform work off-the-clock. As stated, Defendants required Plaintiff
26 and other non-party Aggrieved Employees to perform work off-the-clock outside of their
27 scheduled shifts, including communicating with management and employees of Defendants'
28 other restaurant locations and traveling to Defendants' other restaurant locations to pick up

1 supplies before clocking in. As a result, Defendants failed to track this time that Plaintiff and
2 other non-party Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other
3 non-party Aggrieved Employees received no compensation for this time.

4 69. Additionally, as a result of Defendants' company-wide policies and/or practices
5 of understaffing and/or single-staffing pursuant to labor budgeting, assigning heavy workloads,
6 requiring that certain (managerial) employees to stay on the work premises during meal periods,
7 failing to adhere to a schedule for meal periods, and subsequent lack of meal period coverage,
8 Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted
9 meal periods to which they were entitled and were required to work off-the-clock during meal
10 periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties
11 during unpaid meal periods. Defendants did not pay Plaintiff and other non-party Aggrieved
12 Employees for the time they continued to perform tasks during meal periods. Moreover, as
13 stated, on information and belief, in order to limit the meal period premiums that Defendants
14 would otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees
15 to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, even
16 when meal periods were missed, short, and/or interrupted.

17 70. Defendants did not pay minimum wages for all hours worked by Plaintiff and
18 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
19 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
20 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
21 1197, and 1198.

22 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
23 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
24 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

26 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
27 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

28 72. At all relevant times herein set forth, the applicable IWC Wage Order and

California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

73. 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).

74. 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.

75. 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.

76. First, as stated, during the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing and/or single-staffing certain positions due to labor budgeting and/or limited payroll allocation, which, combined with practice of assigning of heavy workloads, has resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, Defendants had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods.

77. As a result, Plaintiff and other non-party Aggrieved Employees had to work

1 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
2 extended periods of time before taking meal periods. For instance, Plaintiff regularly had her
3 meal periods interrupted and/or cut short due to the lack of coverage and heavy workload.

4 78. Second, as stated, on information and belief, Defendants maintained and
5 implemented a company-wide policy of requiring that at least one (1) MOD be present at all
6 times at the restaurant, resulting in an on-premises meal period policy for certain employees.
7 This policy effectively required that Plaintiff and other non-party Aggrieved Employees remain
8 on the work premises during the meal periods. Because Plaintiff and other non-party Aggrieved
9 Employees were restricted from leaving the restaurants during meal periods, they were denied
10 the ability to use their meal periods freely for their own purposes. For example, during the
11 relevant time period, Plaintiff was required to process all customer transactions involving larger
12 denomination bills while clocked out for a meal period because she was often the only MOD
13 who was authorized to process such transactions. Defendants' MOD policy resulted in further
14 meal period violations as Plaintiff was required to respond to calls from Defendants' District
15 Manager at all times during her shifts, including during her meal periods. Thus, Defendants
16 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
17 meal periods.

18 79. Third, as stated, because Defendants frowned upon employees accruing meal
19 period premiums, Defendants' management pressured employees to clock out for meal periods
20 by the fifth hour of work, under the threat of discipline, regardless of whether they had received
21 a compliant meal period or not, in order to strictly limit the meal period premiums that would
22 need to be paid by Defendants. Plaintiff and other non-party Aggrieved Employees did not sign
23 valid meal period waivers on days that they were entitled to meal periods and were not relieved
24 of all duties.

25 80. At all times herein mentioned, Defendants knew or should have known that, as a
26 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from
27 being relieved of all duties and required to perform some of their assigned duties during meal
28 periods. Defendants further knew or should have known that Defendants did not pay Plaintiff

1 and other non-party Aggrieved Employees meal period premiums when meal periods were
2 missed, shortened, interrupted, and/or late.

3 81. Moreover, Defendants engaged in a company-wide practice and/or policy of not
4 paying meal period premiums owed when compliant meal periods are not provided. Because
5 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
6 received premium pay for missed, late, and interrupted meal periods. As a result, Defendants
7 failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods in
8 violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full
9 meal period premiums due.

10 82. Defendants' conduct violates the applicable IWC Wage Order, and California
11 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
12 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
13 and/or 2699(a), (f), and (k).

14 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

15 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

16 83. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
18 non-party Aggrieved Employees' employment by Defendants.

19 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 85. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest periods
28 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer

1 must “relinquish any control over how employees spend their break time, and relieve their
2 employees of all duties—including the obligation that an employee remain on call. A rest
3 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
4 257, 273 (2016).

5 86. During the relevant time period, Defendants regularly failed to authorize and
6 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
7 per each four (4) hour period worked or major fraction thereof. As with meal periods,
8 Defendants’ company-wide policies and practices, including utilizing labor budgets and
9 resultant understaffing and/or single-staffing of certain positions, as well as assigning heavy
10 workloads, prevented Plaintiff and other non-party Aggrieved Employees from being able to
11 take rest periods. Defendants also failed to schedule rest periods, which, coupled with
12 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and other
13 non-party Aggrieved Employees not being authorized and permitted to take rest periods.

14 87. Furthermore, on information and belief, during the relevant time period,
15 Defendants maintained a company-wide on-premises rest period policy, which effectively
16 required that Plaintiff and other non-party Aggrieved Employees remain on the work premises
17 during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were
18 restricted from leaving the restaurant premises during rest periods, they were denied the ability
19 to use their rest periods freely for their own purposes, such as running personal errands. Thus,
20 Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
21 Employees during rest periods.

22 88. As a result of Defendants’ practices and policies, Plaintiff and other non-party
23 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
24 of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For
25 example, Plaintiff regularly had to work through her rest periods or had her rest periods
26 interrupted and/or cut short to assist other employees and customers, due to heavy workload,
27 and because she had no coverage.

28 89. Defendants have also engaged in a company-wide practice and/or policy of not

1 paying rest period premiums owed when compliant rest periods are not authorized and
2 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
3 Employees have not received premium pay for all missed rest periods. As a result, Defendants
4 denied Plaintiff and other non-party Aggrieved Employees rest periods and failed to pay them
5 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable
6 IWC Wage Order.

7 90. Defendants' conduct violates the applicable IWC Wage Order and California
8 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
9 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
10 2699(a), (f), and (k).

11 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
12 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

18 92. At all relevant times, Defendants have knowingly and intentionally provided
19 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
20 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
21 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours
22 worked; net wages earned; and all applicable hourly rates in effect during the pay period,
23 including rates of pay for overtime wages, and the corresponding number of hours worked at
24 each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and
25 226(a)(9).

26 93. Because Defendants did not record the time Plaintiff and other non-party
27 Aggrieved Employees spent working off the clock and deducted time from their records for
28 meal periods that were interrupted and/or missed (and therefore time for which they should have

1 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
2 Plaintiff and other non-party Aggrieved Employees in compliance with sections 226(a)(1) and
3 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
4 worked by Plaintiff and other non-party Aggrieved Employees, in violation of section 226(a)(2),
5 and failed to list the applicable hourly rates of pay in effect during the pay period and the
6 corresponding accurate number of hours worked at each hourly rate, in violation of section
7 226(a)(9).

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

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

26 96. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
28 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment

1 of any employees for longer hours than those fixed by the order or under conditions of labor
2 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
3 are required to keep accurate time records showing when the employee begins and ends each
4 work period and meal period. During the relevant time period, Defendants engaged in company-
5 wide practices and/or policies of failing to record actual hours worked, and thereby failed to
6 keep accurate records of work period and meal period start and end times for Plaintiff and other
7 non-party Aggrieved Employees, in violation of section 1198.

8 97. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
9 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
10 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

11 **FAILURE TO PAY WAGES UPON TERMINATION**

12 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

20 99. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 other non-party Aggrieved Employees who are no longer employed by Defendants the earned
22 and unpaid wages set forth above, including but not limited to, overtime wages, minimum
23 wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-
24 two (72) hours of their leaving Defendants’ employ.

25 100. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
26 who are no longer employed by Defendants their wages earned and unpaid at the time of
27 discharge, or within seventy-two (72) hours of their leaving Defendants’ employ, violates Labor
28 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore

1 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
2 (k).

3 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

4 **VIOLATION OF LABOR CODE SECTION 204**

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

14 102. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of wages
18 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)
19 calendar days following the close of the payroll period.

20 103. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 other non-party Aggrieved Employees all wages due including, but not limited to, overtime
22 wages, minimum wages, and/or meal and rest period premiums, within the time periods
23 specified by California Labor Code section 204.

24 104. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
25 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

26 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

27 **VIOLATION OF LABOR CODE SECTION 2802**

28 105. At all times herein set forth, California Labor Code section 2802 provides that

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

13 106. First, during the relevant time period, Defendants, on a company-wide basis,
14 expected Plaintiff and other non-party Aggrieved Employees to wear uniform items, including
15 shirts, bearing the company logo. However, Defendants did not provide their employees with
16 sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only
17 provided Plaintiff with one (1) shirt at the time of hire. Because Defendants failed to provide
18 Plaintiff with an adequate number of uniform items, Plaintiff had to wash her uniform more
19 frequently than she would otherwise do laundry, and incurred expenses in doing so. Thus,
20 Defendants failed to maintain the uniforms they required Plaintiff and other non-party
21 Aggrieved Employees to wear during their shifts and forced them to incur the cost of
22 maintaining employee uniforms.

23 107. Second, during the relevant time period, Defendants, on a company-wide basis,
24 required that Plaintiff and other non-party Aggrieved Employees use their own personal
25 vehicles to run company errands. As an example, Plaintiff was required to use her personal
26 vehicle to drive to Defendants’ other locations to pick up ingredients and supplies on her way
27 to work, which she estimates required approximately 20-25 miles of driving per week,
28 roundtrip. Although Defendants required Plaintiff and other non-party Aggrieved Employees

1 to utilize their personal vehicles to carry out their work-related responsibilities, Defendants
2 failed to reimburse them for their mileage or travel expenses.

3 108. Third, during the relevant time period, Defendants, on a company-wide basis,
4 required Plaintiff and other non-party Aggrieved Employees to use their personal mobile
5 devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job
6 duties but failed to reimburse them for the costs of their work-related mobile device and/or
7 mobile data expenses. For instance, Plaintiff was required to use her personal cellular phone to
8 communicate with management and employees of Defendants' other restaurant locations to
9 coordinate the pickup of supplies needed at Plaintiff's restaurant location, communicate with
10 Defendants' District Manager, send the District Manager pictures of the restaurant, and
11 communicate with employees about shift coverage. Although Defendants required Plaintiff and
12 other non-party Aggrieved Employees to use their personal mobile devices and mobile data to
13 carry out their work-related duties, Defendants failed to reimburse them for their costs incurred.

14 109. Defendants could have provided Plaintiff and other non-party Aggrieved
15 Employees with the actual equipment for use on the job, such as company vehicles and company
16 mobile devices, as well as an adequate number of uniform items and access to laundering
17 services. Or, Defendants could have reimbursed employees for their travel expenses, mileage,
18 mobile device usage, and laundering expenses or provided a uniform maintenance allowance.
19 Instead, Defendants passed these operating costs onto Plaintiff and other non-party Aggrieved
20 Employees.

21 110. Defendants' company-wide policy and/or practice of not reimbursing employees
22 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-
23 party Aggrieved Employees violates California Labor Code section 2802. Defendants have
24 intentionally and willfully failed to reimburse Plaintiff and other non-party Aggrieved
25 Employees for necessary business-related expenses and costs.

26 111. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
27 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

28 ///

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

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

6 1. For civil penalties, injunctive relief, and attorneys' fees in excess of thirty-five
7 thousand dollars (\$35,000), exclusive of interest and costs. Plaintiff reserves the right to amend
8 her prayer for relief to seek a different amount.

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

10 2. That the Court declare, adjudge, and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
13 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
17 earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); and 2802 (by failing to reimburse business expenses);

19 3. For civil penalties pursuant to the California Labor Code, including sections 210,
20 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections
21 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

22 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
23 2699(k) to bring Defendants into compliance with the requirements of California Labor Code
24 sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
25 and 2802;

26 5. For attorneys' fees and for costs pursuant to California Labor Code section
27 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,

1 1197, 1198, and 2802;

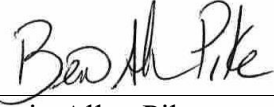
2 6. For pre-judgment interest and post-judgment interest as provided by law; and

3 7. For such other and further relief as the Court may deem equitable and
4 appropriate.

5
6 Dated: August 6, 2025

Respectfully submitted,

7 Capstone Law APC

8
9 By: 

Bevin Allen Pike

Daniel S. Jonathan

Trisha K. Monesi

Shealene P. Mancuso

10 Attorneys for Plaintiff Leslie Del Rio
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EXHIBIT “1”



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May 23, 2025

VIA ONLINE SUBMISSION

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

Subject: *Leslie Del Rio v. Desmond Foods, L.P., et al.*

Dear PAGA Administrator:

This office represents Leslie Del Rio in connection with her claims under the California Labor Code. Ms. Del Rio was an employee of DESMOND FOODS, L.P.; DESMOND FOODS MANAGEMENT, LLC; JEM RESTAURANT MANAGEMENT CORPORATION; PENINSULA FOODS, L.P.; WENDY'S OPERATORS OF CENTRAL CALIFORNIA, INC.; and/or WENDY'S OF SANTA CLARA, INC. For the purpose of this letter, Ms. Del Rio collectively refers to these entities as "DESMOND."

The employers may be contacted directly at the addresses below:

DESMOND FOODS, L.P.
312 W. CROMWELL
FRESNO, CA 93711

DESMOND FOODS MANAGEMENT, LLC
312 W. CROMWELL
FRESNO, CA 93711

JEM RESTAURANT
MANAGEMENT CORPORATION
312 W. CROMWELL
FRESNO, CA 93711

PENINSULA FOODS, L.P.
312 W. CROMWELL
FRESNO, CA 93711

WENDY'S OPERATORS OF
CENTRAL CALIFORNIA, INC.
312 W. CROMWELL
FRESNO, CA 93711

WENDY'S OF SANTA CLARA, INC.
312 W. CROMWELL
FRESNO, CA 93711

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

DESMOND employed Ms. Del Rio as an hourly paid, non-exempt employee from approximately July 2024 to April 2025. Ms. Del Rio worked for DESMOND as a Crew Member and Supervisor at its Wendy’s restaurant located in Stockton, California (725 W. Hammer Lane, Stockton, California 95210). During her employment, Ms. Del Rio typically worked eight (8) or more hours per day, and five (5) days per week. At the time Ms. Del Rio’s employment with DESMOND ended, she earned approximately \$22.00 per hour. Her job duties included, without limitation, supervising employees, operating the cash register, taking inventory, preparing the store for visits from Wendy’s corporate officers, and preparing food orders.

DESMOND has committed each of the following Labor Code violations against Ms. Del Rio, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

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

DESMOND FOODS, L.P. and PENINSULA FOODS, L.P. are California limited partnerships. DESMOND FOODS MANAGEMENT, LLC is a California limited liability company. JEM RESTAURANT MANAGEMENT CORPORATION and WENDY’S OF SANTA CLARA, INC. are California corporations. WENDY’S OPERATORS OF CENTRAL CALIFORNIA, INC. is a California nonprofit corporation. Together, they own and operate a chain of Wendy’s franchise restaurants, with approximately 33 restaurants in California. Upon information and belief, DESMOND maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fresno, California, for all non-exempt, hourly paid employees working for DESMOND in California, including Ms. Del Rio and other aggrieved employees. At all relevant times, DESMOND issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Del Rio and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

First, during the relevant time period, DESMOND had, and continues to have, a company-wide policy and/or practice of requiring Ms. Del Rio and other aggrieved employees to perform work off-the-clock in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with DESMOND’s practice of understaffing and/or single-staffing certain positions and assigning heavy workloads (*see infra*), led Ms. Del Rio and other aggrieved employees to work off-the-clock before and after their scheduled shifts. Ms. Del Rio, for instance, was required to communicate with management and employees of DESMOND’s other restaurant locations to coordinate the pickup of supplies needed at Ms. Del Rio’s restaurant location before clocking in for her shifts. Furthermore, Ms. Del Rio was required to travel to DESMOND’s other restaurant locations to pick up supplies before clocking in approximately three (3) times per week, which would take approximately 20-40 minutes per instance, depending on which store(s) she had to travel to. Thus, Ms. Del Rio and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Second, during the relevant time period, upon information and belief, DESMOND’s uniform use of labor budgeting, understaffing, and/or single-staffing certain positions resulted in a failure to provide Ms. Del Rio and other aggrieved employees with adequate meal period coverage, such that there were too few employees on duty to handle the workload and attend to customers. Because DESMOND 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. Del Rio and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Third, DESMOND had, and continues to have, a company-wide policy requiring that at least one “Manager on Duty” (MOD) be present in the store at all times, yet DESMOND would sometimes only schedule one (1) MOD per shift, due to labor budget restrictions. For example, during the relevant time period, Ms. Del Rio was sometimes the only managerial employee staffed during certain shifts and, as such, was the only employee on duty who was authorized to perform certain tasks such as processing customer transactions involving large denomination bills. Thus, while

clocked out for her meal periods, Ms. Del Rio was required to remain on the premises as the MOD and would have her meal periods interrupted or cut short to handle these customer transactions. DESMOND's policies combined to create a de facto on-premises meal period policy and a lack of meal period coverage. DESMOND also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Del Rio and other aggrieved employees to not be relieved of their duties for compliant meal periods. DESMOND did not pay Ms. Del Rio and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Fourth, on information and belief, because DESMOND frowned upon employees accruing meal period premiums, DESMOND's management pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, even when they did not receive a compliant meal period. Thus, DESMOND did not record all hours worked during meal periods, and Ms. Del Rio and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

Due to DESMOND's policies and/or practices of labor budgeting and limiting the amount of overtime employees could accrue, DESMOND required Ms. Del Rio and other aggrieved employees to perform work off-the-clock. As stated, DESMOND required Ms. Del Rio and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, including communicating with management and employees of DESMOND's other restaurant locations and traveling to DESMOND's other restaurant locations to pick up supplies before clocking in. As a result, DESMOND failed to track this time that Ms. Del Rio and other aggrieved employees spent working off-the-clock, and thus, Ms. Del Rio and other aggrieved employees received no compensation for this time.

Additionally, as a result of DESMOND's company-wide policies and or practices of understaffing and/or single-staffing pursuant to labor budgeting, assigning heavy workloads, requiring that certain (managerial) employees stay on the work premises during meal periods, failing to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Del Rio and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. DESMOND did not pay Ms. Del Rio and other aggrieved employees for the time they continued to perform tasks during meal periods. Moreover, as stated, on information and belief, in order to limit meal period premiums that DESMOND would otherwise owe, DESMOND pressured Ms. Del Rio and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, even when meal periods were missed, short, and/or interrupted.

DESMOND did not pay at least minimum wages for all hours worked by Ms. Del Rio and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DESMOND 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, DESMOND regularly failed to pay at least minimum wages to Ms. Del Rio 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. Del Rio and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DESMOND into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, DESMOND had, and continues to have, a company-wide policy and/or practice of understaffing and/or single-staffing certain positions due to labor budgeting and/or limited payroll allocation, which, combined with the assigning of heavy workloads, has resulted in a lack of meal

period coverage and prevented Ms. Del Rio and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, DESMOND had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Del Rio and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Ms. Del Rio and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For instance, Ms. Del Rio regularly had her meal periods interrupted and/or cut short due to the lack of coverage and heavy workload.

Second, as stated, on information and belief, DESMOND maintained and implemented a company-wide policy of requiring that at least one (1) MOD be present at all times at the store, resulting in an on-premises meal period policy for certain employees. This policy effectively required that Ms. Del Rio and other aggrieved employees remain on the work premises during the meal periods. Because Ms. Del Rio and other aggrieved employees were restricted from leaving the stores during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, during the relevant time period, Ms. Del Rio was required to process all customer transactions involving larger denomination bills while clocked out for a meal period because she was often the only MOD who was authorized to process such transactions. DESMOND's MOD policy resulted in further meal period violations as Ms. Del Rio was required to respond to calls from DESMOND's District Manager at all times during her shifts, including during her meal periods. Thus, DESMOND effectively maintained control over Ms. Del Rio and other aggrieved employees during meal periods.

Third, as stated, because DESMOND frowned upon employees accruing meal period premiums, DESMOND's management pressured employees to clock out for meal periods by the fifth hour of work, under the threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal period premiums that would need to be paid by DESMOND. Ms. Del Rio and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Moreover, DESMOND 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. Del Rio and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, DESMOND regularly failed to authorize and permit Ms. Del Rio 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, DESMOND's company-wide policies and practices, including utilizing labor budgets and resultant understaffing and/or single-staffing certain positions, as well as assigning heavy workloads, prevented Ms. Del Rio and other aggrieved employees from being able to take rest periods. DESMOND also failed to schedule rest periods, which, coupled with DESMOND's failure to provide adequate rest period coverage, further led to Ms. Del Rio and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, DESMOND maintained a company-wide on-premises rest period policy, which effectively required that Ms. Del Rio and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Del Rio and other aggrieved employees were restricted from leaving the store 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, DESMOND effectively maintained control over Ms. Del Rio and other aggrieved employees during rest periods.

As a result of DESMOND's practices and policies, Ms. Del Rio and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Del Rio regularly had to work through her rest periods or had her rest periods interrupted and/or cut short to assist other employees and customers, due to heavy workload, and because she had no coverage.

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

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

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

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

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

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

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages

of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), DESMOND willfully failed to maintain accurate payroll records for Ms. Del Rio 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, DESMOND engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Del Rio and other aggrieved employees, in violation of section 1198.

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

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

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

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

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, DESMOND, on a company-wide basis, expected Ms. Del Rio and other aggrieved employees to wear uniform items, including shirts, bearing the company logo. However, DESMOND did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, DESMOND only provided Ms. Del Rio with one (1) shirt at the time of hire. Because DESMOND failed to provide Ms. Del Rio with an adequate number of uniform items, Ms. Del Rio had to wash her uniform more frequently than she would otherwise do

laundry, and incurred expenses in doing so. Thus, DESMOND failed to maintain the uniforms they required Ms. Del Rio and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Furthermore, during the relevant time period, DESMOND, on a company-wide basis, required that Ms. Del Rio and other aggrieved employees use their own personal vehicles to run company errands. As an example, Ms. Del Rio was required to use her personal vehicle to drive to DESMOND's other locations to pick up ingredients and supplies on her way to work, which she estimates required approximately 20-25 miles of driving per week, roundtrip. Although DESMOND required Ms. Del Rio and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, DESMOND failed to reimburse them for their mileage or travel expenses.

Additionally, during the relevant time period, DESMOND, on a company-wide basis, required Ms. Del Rio 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 instance, Ms. Del Rio was required to use her personal cellular phone to communicate with management and employees of DESMOND's other restaurant locations to coordinate the pickup of supplies needed at Ms. Del Rio's restaurant location, communicate with DESMOND's District Manager, send the District Manager pictures of the restaurant, and communicate with employees about shift coverage. Although DESMOND required Ms. Del Rio and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, DESMOND failed to reimburse them for their costs incurred.

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

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

California Labor Code § 558(a)

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

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

Accordingly, Ms. Del Rio seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Del Rio, 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 DESMOND for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

A handwritten signature in black ink that reads "Olivia Green". The signature is written in a cursive, flowing style.

Olivia Green

Copy: DESMOND FOODS, L.P. (via U.S. Certified Mail); DESMOND FOODS MANAGEMENT, LLC (via U.S. Certified Mail); JEM RESTAURANT MANAGEMENT CORPORATION (via U.S. Certified Mail); PENINSULA FOODS, L.P. (via U.S. Certified Mail); WENDY'S OPERATORS OF CENTRAL CALIFORNIA, INC. (via U.S. Certified Mail); WENDY'S OF SANTA CLARA, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

9589 0710 5270 0211 0129 50



DESMOND FOODS, L.P.
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DEL Rcv v.

DESMOND

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9590 9402 8803 4005 5689 57

2 Article Number (Transfer from service label)

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- A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

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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
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9589 0710 5270 0211 0129 43



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Per memo
Postmark

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9590 9402 8803 4005 5689 71

2. Article Number (Transfer from service label)

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Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

Received by (Printed Name)

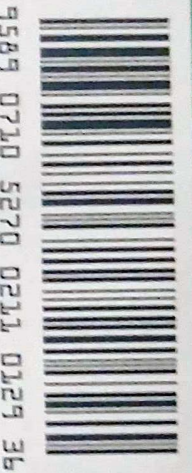
C. Date of Delivery

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

Service Type

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

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1875 Century Park, East, 1000
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9589 0710 5270 0211 0129 36

JEM RESTAURANT
MANAGEMENT CORPORATION
312 W. CROMWELL
FRESNO, CA 93711

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Person

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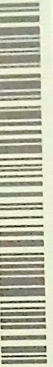
JEM RESTAURANT
MANAGEMENT CORPORATION
312 W. CROMWELL
FRESNO, CA 93711

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MANAGEMENT CORPORATION
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FRESNO, CA 93711

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2. *Transfer from service label*

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- 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:

- 3. Service Type
- ☐ Adult Signature
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- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
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- ☐ Registered Mail™
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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PENINSULA FOODS, L.P.
312 W. CROMWELL
FRESNO, CA 93711

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PENINSULA FOODS, L.P.
312 W. CROMWELL
FRESNO, CA 93711



9590 9402 8803 4005 5689 95

2. Article Number (Transfer from service label)

9589 0710 5270 0211 0129 29

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A. Signature ☒ Agent
☒ Addressee
Received by (Printed Name) C. Date of Delivery

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
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Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

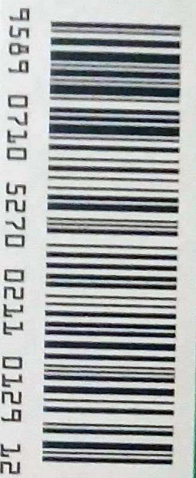
Signature of Addressee or Agent

Signature of Post Office Employee

Signature of Recipient

Signature of Sender

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



9589 0710 5270 0211 0129 12

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- ☐ Addressee

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312 W. CROMWELL
FRESNO, CA 93711



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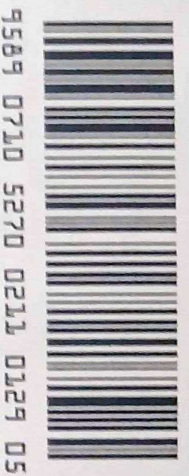
2. Article Number (Transfer from PS Form 3811)

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FRESNO, CA 93711

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CLARA, INC.
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FRESNO, CA 93711

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A. Signature
X

B. Received by (Printed Name) _____

C. Date of Delivery _____

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

2. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

3. Priority Mail Express®
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PS Form 3811, July 2020 PSN 7530-02-000-9053

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Return Receipt (mandatory) \$

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9590 9402 8803 4005 5689 57

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9589 0710 5270 0211 0129 50

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *JBrami*

☐ 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
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
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A. Signature
X 

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

3. Service Type

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

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9590 9402 8803 4005 5689 71

2. Article Number (Transfer from service label)
9589 0710 5270 0211 0129 43

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X 

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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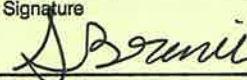
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9590 9402 8803 4005 5690 08

2. Article Number (Transfer from service label)
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☐ Agent
☐ Addressee

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C. Date of Delivery

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3. Service Type

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9590 9402 8803 4005 5689 95

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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☐ Adult Signature Restricted Delivery
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WENDY'S OF SANTA
CLARA, INC.
312 W. CROMWELL
FRESNO, CA 93711



9590 9402 8803 4005 5689 64

2 Article Number (Transfer from service label)

9589 0710 5270 0211 0129 05

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Shirley*

☐ Agent

☐ Addressee

3. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

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

all Restricted Delivery

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

Domestic Return Receipt

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 **August 6, 2025**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** 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:

S. Brett Sutton (SBN: 143107)

brett@suttonhague.com

Jared Hague (SBN: 251517)

jared@suttonhague.com

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FOODS MANAGEMENT, LLC; JEM

RESTAURANT MANAGEMENT

CORPORATION; PENINSULA

FOODS, L.P., and WENDY'S OF

SANTA CLARA, 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 E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **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 ELECTRONIC 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 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 **August 6, 2025**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name

Signature

