

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer:

Electronically FILED by Superior Court of California, County of Los Angeles on 01/23/2023 11:39 AM David W. Slayton, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

Orlando Villalba (SBN 232165)
 Orlando.Villalba@capstonelawyers.com
 Helga Hakimi (SBN 257381)
 Helga.Hakimi@capstonelawyers.com
 Roxanna Tabatabaeepour (SBN 260187)
 Roxanna.Taba@capstonelawyers.com
 Capstone Law APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067
 Telephone: (310) 556-4811
 Facsimile: (310) 943-0396

Attorneys for Plaintiff CELESTE RAMIREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

CELESTE RAMIREZ, as an
 aggrieved employee pursuant to the
 Private Attorneys General Act
 ("PAGA"), on behalf of the State of
 California and other non-party
 Aggrieved Employees,

Plaintiff,

vs.

STINKIN CRAWFISH
 RESTAURANTS LLC, a California
 limited liability company; STINKIN
 HOLDINGS LLC, a California
 limited liability company; and DOES
 1 through 10, inclusive,

Defendants.

Case No.: **23STCV01420**

**COMPLAINT – PAGA ENFORCEMENT
 ACTION**

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

Jury Trial Demanded

1 Plaintiff Celeste Ramirez, 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
9 of 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
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on November 18, 2022, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

12 **THE PARTIES**

13 6. Plaintiff Celeste Ramirez is a resident of Norwalk, in Los Angeles County,
14 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
15 approximately June 2022 to September 2022. Plaintiff worked as a Server for Defendants at
16 their restaurant locations in Norwalk and Downey, California. Plaintiff typically worked
17 seven (7) hours or more per day, and five (5) days per week. At the time Plaintiff’s
18 employment with Defendants ended, she was compensated approximately \$15.96 per hour.
19 Plaintiff’s job duties included, without limitation, providing customer service, taking customer
20 orders, running food to tables, bussing tables, preparing food items, and cleaning and
21 maintaining the restaurant.

22 7. On information and belief, Defendants required some employees, including
23 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
24 employment. On further information and belief, Defendants’ arbitration agreement was and is
25 both procedurally and substantively unconscionable. Specifically, Defendants presented
26 employees with a “Dispute Resolution and Arbitration Agreement” (“Arbitration Agreement”)
27 during the onboarding process, which had to be reviewed and acknowledged immediately.
28 Specifically, the Arbitration Agreement was one of several documents presented to new

1 employees for signature during the orientation process, including Meal Break Waiver
2 Agreement; Nondisclosure & Non-recruiting Agreement; and Employee Handbook, among
3 other documents. Also, employees did not have a meaningful opportunity to negotiate the
4 terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for
5 them to sign on a take-it or leave-it basis, along with all of the other on-boarding documents.

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

9 9. STINKIN HOLDINGS LLC was and is, upon information and belief, a
10 California limited liability company, and at all times hereinafter mentioned, an employer
11 whose employees are engaged throughout this county, the State of California.

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

16 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of STINKIN CRAWFISH RESTAURANTS
18 LLC and STINKIN HOLDINGS LLC, at all relevant times.

19 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, STINKIN
21 CRAWFISH RESTAURANTS LLC; STINKIN HOLDINGS LLC; and/or DOES 1 through 10
22 (collectively, "Defendants" or "SCR"), each acting as the agent, employee, alter ego, and/or
23 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
24 within the course and scope of such agency, employment, joint venture, or concerted activity
25 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
26 accordance with, and represent, the official policy of Defendants.

27 13. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

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

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

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

- 20 (a) jointly exercised meaningful control over the work performed by
21 Plaintiff and other non-party Aggrieved Employees;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
23 Aggrieved Employees’ wages, hours, and working conditions, including
24 the quantity, quality standards, speed, scheduling, and operative details
25 of the tasks performed by Plaintiff and other non-party Aggrieved
26 Employees;
- 27 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
28 perform work which is an integral part of Defendants’ businesses; and

1 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
2 Employees as a matter of economic reality in that Plaintiff and other
3 non-party Aggrieved Employees were dependent on Defendants, who
4 shared the power to set the wages of Plaintiff and other non-party
5 Aggrieved Employees and determined their working conditions, and
6 who jointly reaped the benefits from the underpayment of their wages
7 and noncompliance with other statutory provisions governing their
8 employment.

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

12 18. STINKIN CRAWFISH RESTAURANTS LLC; STINKIN HOLDINGS LLC;
13 and/or DOES 1 through 10 are therefore alter egos of each other.

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

17 20. Plaintiff further alleges, upon information and belief, that the Defendants
18 STINKIN CRAWFISH RESTAURANTS LLC and STINKIN HOLDINGS LLC are alter egos
19 of each other for the following reasons:

- 20 (a) According to their most recent "Statement of Information" forms filed
21 with the California Secretary of State, STINKIN CRAWFISH
22 RESTAURANTS LLC and STINKIN HOLDINGS LLC share common
23 officers and/or managers, including, but not limited to, Chris Su and
24 Man [Tham] Lam; and
- 25 (b) On information and belief, STINKIN CRAWFISH RESTAURANTS
26 LLC and STINKIN HOLDINGS LLC utilize the same standardized
27 employment forms and issue the same employment policies.

28 //

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants own and operate a Cajun-style seafood restaurant chain, with approximately 10 “Stinkin Crawfish” restaurant locations in Los Angeles County. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in West Covina, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiff and 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.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in West Covina, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites 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.

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

25. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

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

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

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

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

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not

1 authorized and permitted to take a compliant rest period. In violation of the California Labor
2 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
3 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
4 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
5 pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

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

27 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they could not implement an unlawful tipping policy, which required

1 Plaintiff and other non-party Aggrieved Employees to turn over and pay a portion of the tips
2 or gratuities paid to them to Defendants, or Defendants made unlawful withholdings and
3 deductions from Plaintiff's and other non-party Aggrieved Employees' earned tips or
4 gratuities.

5 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 suitable resting facilities to cease work and recover during meal or rest periods, but failed to
8 provide suitable resting facilities.

9 37. 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 reimbursement for all business-related expenses and costs they incurred during the
12 course and scope of their employment and that they did not receive reimbursement of
13 applicable business-related expenses and costs incurred.

14 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that Defendants had a duty to provide
16 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
17 of their employment with Defendants as required by the California Wage Theft Prevention
18 Act, but failed to do so.

19 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
22 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
23 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
24 that they were properly denied wages, all in order to increase Defendants' profits.

25 40. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

3 41. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
4 person who was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.”

6 42. Plaintiff and other current and former employees of Defendants are “aggrieved
7 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
8 or former employees and one or more of the alleged violations were committed against them.

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

- 12 (a) The aggrieved employee shall give written notice by online filing
13 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
14 to the employer of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support
16 the alleged violations.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
21 employer and the aggrieved employee by certified mail that it does not
22 intend to investigate the alleged violation within sixty (60) calendar
23 days of the postmark date of the Employee’s Notice. Upon receipt of
24 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
25 five (65) calendar days of the postmark date of the Employee’s Notice,
26 the aggrieved employee may commence a civil action pursuant to
27 California Labor Code section 2699 to recover civil penalties in addition
28 to any other penalties to which the employee may be entitled.

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

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

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice. The employer shall
15 give written notice by certified mail within that period of time to the
16 aggrieved employee or representative and the agency if the alleged
17 violation is cured, including a description of actions taken, and no civil
18 action pursuant to Section 2699 may commence. If the alleged violation
19 is not cured within the 33-day period, the employee may commence a
20 civil action pursuant to Section 2699.

21 45. On November 18, 2022, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-920298-22. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants dated November 18, 2022, is attached hereto as

1 “Exhibit 1.”

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

5 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 510, 512(a),
8 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

9 48. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
18 as a private attorney general, seeks assessment and collection of civil penalties under Labor
19 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
20 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
21 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
22 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
23 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
24 applicable IWC Wage Order.

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

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

51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

53. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate

1 Plaintiff and other non-party Aggrieved Employees with at least
2 minimum wages for all hours worked, as set forth below;

3 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
5 and other non-party Aggrieved Employees with meal periods, as set
6 forth below;

7 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to authorize and
9 permit Plaintiff and other non-party Aggrieved Employees to take rest
10 periods, as set forth below;

11 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
12 IWC Wage Order for failure to provide accurate and complete wage
13 statements to Plaintiff and other non-party Aggrieved Employees, as set
14 forth below;

15 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
16 IWC Wage Order for failure to maintain payroll records, as set forth
17 below;

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

20 (h) Violation of Labor Code section 201 and 202 for failure to pay all
21 earned wages upon termination, as set forth below;

22 (i) Violation of Labor Code section 351 for collecting and/or withholding
23 tips and gratuities given to Plaintiff and other non-party Aggrieved
24 Employees, as set forth below;

25 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
26 Order for failure to provide suitable resting facilities to Plaintiff and
27 other non-party Aggrieved Employees, as set forth below;

28 (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff

1 and other non-party Aggrieved Employees for all business expenses
2 necessarily incurred, as set forth below; and

- 3 (l) Violation of Labor Code section 2810.5 for failure to provide notice of
4 material terms of employment, as set forth below.

5 **FAILURE TO PAY OVERTIME**

6 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

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

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

26 59. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

60. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other non-party 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 worked were not recorded.

61. First, during the relevant time period, Defendants maintained and implemented on a company-wide basis, a non-compliant written overtime policy. Specifically, Defendants' non-compliant overtime policy fails to correctly state when employees are entitled to receive overtime premiums. The policy states in full: "Overtime is over 40hrs per work week." However, under California law, not only is an employer required to pay employees overtime wages when they work more than forty (40) hours per workweek, they are also required to pay employees overtime when they work more than eight (8) hours in a day. Thus, Defendants' written overtime policy is non-compliant on its face, as it fails to mention that employees are entitled to overtime premiums for all of the hours they worked in excess of eight (8) hours in a day.

62. Second, Defendants had, and continue to have, a company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to perform tasks off-the-clock before their shifts. For example, because Defendants' timekeeping system was integrated with the company's point-of-sale ("POS") system, Plaintiff and other non-party Aggrieved Employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Plaintiff was regularly required to wait about two (2) minutes under Defendants' control until a POS machine was available for clocking-in, time for which she was not paid. Further, during this time, while Plaintiff waited to clock in for the start of her shift, approximately

1 once per week, Plaintiff was required to discuss work-related issues with managers, such as
2 restaurant operations or her job performance, or she was required to complete tasks such as
3 cleaning tables and filling drinks for customers. These work-related discussions and tasks
4 could take up to five (5) minutes before Plaintiff clocked in for the start of her shift. Thus,
5 Defendants failed to track all of the time that employees spent performing work-related tasks
6 before their shifts, and Plaintiff and other non-party Aggrieved Employees received no
7 compensation for this time.

8 63. In addition, Defendants had, and continue to have, a company-wide policy
9 and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to obtain
10 certain certifications, such as an Alcoholic Beverage Control (“ABC”) certificate, and to keep
11 their certifications and/or trainings up-to-date, but Defendants failed to compensate Plaintiff
12 and other non-party Aggrieved Employees for this time spent doing so. For example, Plaintiff
13 was required to take an online training course while she was at home, which took
14 approximately one and one half (1.5) hours to complete, but was not compensated for this
15 time worked. Thus, Defendants failed to track the time Plaintiff and other non-party
16 Aggrieved Employees spent completing the mandatory trainings, and Plaintiff and other non-
17 party Aggrieved Employees received no compensation for this time.

18 64. Third, on information and belief, Defendants had, and continue to have, a
19 company-wide policy and/or practice of strictly staffing their restaurant locations based on the
20 labor hours allocated by each location’s labor or payroll budget set by corporate. On
21 information and belief, Defendants’ uniform use of labor budgets, combined with the
22 assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate
23 meal period coverage, because there were too few employees on duty to handle the workload
24 and customer demand. Defendants also had a practice of failing to schedule meal periods,
25 which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
26 their duties for compliant meal periods. For example, Plaintiff worked through all of her meal
27 periods during her employment with Defendants in order to keep up with customer demand
28 and complete her duties. Because Defendants did not employ or staff a sufficient number of

1 employees to meet customer demand, there was no one available to relieve employees needing
2 meal period coverage, and Plaintiff and other non-party Aggrieved Employees were not
3 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
4 to receive a meal period. Consequently, Plaintiff and other non-party Aggrieved Employees
5 were required to work through and had their unpaid meal periods interrupted in order to
6 complete their assigned duties and handle customer demand, time for which they were not
7 paid.

8 65. Fourth, during the relevant time period, on information and belief, Defendants
9 implemented a company-wide policy and/or practice of automatically deducting meal periods
10 from Plaintiff's and other non-party Aggrieved Employees' time records, instead of requiring
11 employees to clock in and out for meal periods. As a result of this policy, Defendants
12 deducted 30-minute meal periods from Plaintiff's and other non-party Aggrieved Employees'
13 time records even when meal periods were missed, short, and/or interrupted. Thus,
14 Defendants did not record all hours worked during meal periods, and Plaintiff and other non-
15 party Aggrieved Employees performed work during meal periods for which they were not
16 paid.

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

25 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
26 the balance of overtime compensation as required by California law, violates the provisions of
27 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
28 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections

1 558 and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY MINIMUM WAGES**

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

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

11 69. As stated above, Defendants had a company-wide policy and/or practice
12 requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related
13 tasks while off-the-clock before their shifts, including waiting to clock in for the start of their
14 shifts and completing work tasks during this time because other employees were using the
15 POS system. Thus, Defendants failed to track this time Plaintiff and other non-party
16 Aggrieved Employees spent working off-the-clock, and Plaintiff and other non-party
17 Aggrieved Employees received no compensation for this time. Moreover, as stated, Plaintiff
18 and other non-party Aggrieved Employees were required to complete mandatory trainings
19 and/or obtain certain certifications while at home or outside of their scheduled shifts, but
20 Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for this
21 time spent working off-the-clock.

22 70. Additionally, as set forth above, due to Defendants’ uniform use of labor
23 budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and
24 subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees
25 were impeded from taking all uninterrupted meal periods to which they were entitled and were
26 required to work during their meal periods, time for which they were not paid. Moreover, as
27 stated, on information and belief, Defendants had a company-wide practice and/or policy of
28 automatically deducting meal periods from Plaintiff’s and other non-party Aggrieved

1 Employees' time records, even when meal periods were missed, short, and/or interrupted. Thus,
2 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for
3 actual hours worked during unpaid meal periods because these hours were not always correctly
4 recorded.

5 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
6 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
7 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
8 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
9 1194, 1197, and 1198.

10 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
11 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
12 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
13 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

16 73. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
18 other non-party Aggrieved Employees' employment by Defendants.

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

26 75. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
2 1198, and the applicable IWC Wage Order also require employers to provide a second meal
3 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
4 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
5 the total hours worked is no more than twelve (12) hours, the second meal period may be
6 waived by mutual consent of the employer and the employee only if the first meal period was
7 not waived.

8 77. As stated, Defendants had, and continue to have, company-wide policies and/or
9 practices of understaffing their locations, which, combined with heavy workloads and a failure
10 to schedule meal periods, has resulted in a lack of meal period coverage and prevented
11 Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal
12 periods to which they were entitled. As a result, Plaintiff and other non-party Aggrieved
13 Employees had to work through all or part of their meal periods, had their meal periods
14 interrupted, and/or had to wait extended periods of time before taking meal periods. For
15 example, as stated, Plaintiff had to forego nearly all of her meal periods, due to the lack of
16 coverage and in order to meet Defendants' expectations.

17 78. As also stated, Defendants implemented a company-wide policy and practice of
18 automatically deducting meal periods from Plaintiff's and other non-party Aggrieved
19 Employees' time records, instead of requiring employees to clock in and out for meal periods.
20 As a result of this policy, Defendants deducted 30 minutes from Plaintiff's and other non-
21 party Aggrieved Employees' time records even when meal periods were missed, short, and/or
22 interrupted. Thus, Defendants systematically failed to correctly record meal periods.

23 79. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
24 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
25 hours in one day. For example, Plaintiff did not receive second 30-minute meal periods on
26 days she worked in excess of ten (10) hours in one day. Plaintiff and other non-party
27 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
28 to meal periods and were not relieved of all duties.

1 80. Additionally, Defendants had a company-wide policy of requiring all newly
2 hired employees to sign blanket meal period waivers at or near their time of hire. Defendants
3 took the position that non-exempt, hourly paid employees had waived their rights to first
4 and/or second meal periods for the entirety of their employment and, on that basis, did not
5 provide them with all meal periods to which they were entitled. Defendants' presumption that
6 meal periods would not be provided for shifts in excess of five (5) hours but less than six (6)
7 hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket
8 meal period waivers signed at or near the time of hire, and imposition on employees to revoke
9 the waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
10 Employees from taking all meal periods to which they were entitled.

11 81. Furthermore, an employer's obligation to provide a meal period is only
12 "triggered" when the employer "employs an employee for a work period of more than five hours
13 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
14 work for a full five hours, its meal break obligation is triggered.").

15 [A]fter the meal break obligation is triggered . . . an employer is put to a
16 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
17 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
written agreement to an on-duty meal period if circumstances permit.
Failure to do one of these will render the employer liable for premium pay.

18 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
19 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
20 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them
21 invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-
22 party Aggrieved Employees with meal periods did not arise until they had employed them for a
23 full five (5) hours.

24 82. At all times mentioned herein, Defendants knew or should have known that as a
25 result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually
26 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
27 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
28 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

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

86. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

87. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

88. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
2 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
3 Defendants' company-wide use of labor budgeting and/or limited payroll allocation,
4 understaffing, and assignment of heavy workloads, resulted in a lack of rest period coverage
5 and prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all
6 duty in order to take compliant rest periods. Additionally, Defendants also failed to schedule
7 rest periods, which, coupled with Defendants' failure to provide adequate rest period
8 coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
9 authorized and permitted to take rest periods.

10 89. Furthermore, upon information and belief, Defendants maintained a company-
11 wide on-premises rest period policy, which effectively required that Plaintiff and other non-
12 party Aggrieved Employees remain on or near the work premises during their rest periods.
13 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
14 premises during rest periods, they were denied the ability to use their rest periods freely for
15 their own purposes, such as running personal errands. Thus, Defendants effectively
16 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
17 periods.

18 90. As a result of Defendants' practices and policies, Plaintiff and other non-party
19 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
20 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
21 were entitled. For example, throughout her employment, Plaintiff had to forego her rest
22 periods almost entirely because the restaurant was busy, she did not have coverage, and there
23 was an expectation for all employees to work through their rest periods.

24 91. Defendants have also engaged in a systematic, company-wide practice and/or
25 policy of not paying rest period premiums owed when rest periods are not authorized and
26 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods.

28 92. Accordingly, Defendants failed to authorize and permit all compliant rest

1 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
2 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
3 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
4 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

12 94. During the relevant time period, Defendants have knowingly and intentionally
13 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
14 inaccurate wage statements. For example, Defendants issued uniform wage statements to
15 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
16 earned; total hours worked; net wages earned; the name of the legal entity that is the
17 employer; and all applicable hourly rates in effect during the pay period, including rates of
18 pay for overtime wages and/or meal and rest period premiums, and the corresponding number
19 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
20 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

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

3 96. Further, and separate from these violations, Defendants issued uniform wage
4 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list
5 the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
6 section 226(a)(8) is to provide California employees with transparency as to the true identity
7 of their employer, to allow the employee to contact their employer during employment or in
8 the future for various reasons, including filing an administrative claim, judicial claim, or other
9 action to seek relief against their employer, to obtain unemployment benefits, etc. During the
10 relevant time period, Defendants systematically, and on a company-wide basis, issued wage
11 statements to Plaintiff and other non-party Aggrieved Employees that incorrectly list the
12 employer as “Stinkin Crawfish,” but, according to the California Secretary of State’s website,
13 there is no such entity by this name. For example, Defendants incorrectly listed the
14 employing entity’s name on Plaintiff’s and other non-party Aggrieved Employees’ wage
15 statements, including Plaintiff’s wage statements dated June 28, 2022; July 12, 2022; July 26,
16 2022; August 9, 2022; August 23, 2022; September 6, 2022; and September 13, 2022.

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

25 98. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
4 civil penalty if they fail to maintain accurate and complete records as required by section
5 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
7 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
8 as a result of failing to record the off-the-clock hours that they worked.

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

24 100. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
25 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

27 //

28 //

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

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

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

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

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

23 **FAILURE TO PAY WAGES UPON TERMINATION**

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

25 105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 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.

106. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

107. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

UNLAWFUL TIPPING POLICY

VIOLATION OF LABOR CODE SECTION 351

108. At all relevant times herein, California Labor Code section 351 provides that no employer or agent shall collect, take, or receive any gratuity that is paid, given to, or left for an employee by a patron. Gratuity is deemed to be the sole property of the employee or employees to whom they are paid, given, or left for. California law permits employer-mandated tip pooling so long as the tip pooling policy is reasonable.

109. During the relevant time period, as stated, Defendants implemented a company-wide employer-mandated tip pooling policy, whereby they required employees, including Plaintiff and other non-party Aggrieved Employees, to turn over a percentage of their tips or gratuities to managerial employees. Because Defendants' employer-mandated tip pooling requires servers to turn over a percentage of their tips or gratuities to managerial employees, who are agents of the employer and do not provide direct table service to patrons, Defendants' tip pooling policy is improperly used to compensate Defendants. As a result, Defendants' tip pooling policy is unreasonable and unfair because it allows managerial employees,

1 Defendants' agents, to take or receive gratuities, and thus violates California Labor Code
2 section 351.

3 110. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS, TITLE 8, SECTION 11050(13)(B)**

8 111. At all relevant times herein, California Labor Code section 1198 makes it
9 illegal to employ an employee under conditions of labor that are prohibited by the applicable
10 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
11 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
12 The employment of any employee . . . under conditions of labor prohibited by the order is
13 unlawful." California Code of Regulations, Title 8, section 11050(13)(B) provides that
14 "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
15 shall be available to employees during work hours."

16 112. Defendants' California restaurant locations are generally similar in their layout
17 and design and there was, and continues to be, space that allows for a resting facility that
18 employees may use to cease work and recover during meal or rest periods. Defendants could
19 have provided Plaintiff and other non-party Aggrieved Employees with a resting facility
20 within all of their restaurants, with reasonable or no modification, but instead denied, and
21 continue to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result,
22 Plaintiff and other non-party Aggrieved Employees were forced to adjust to areas not
23 conducive to resting, or search for areas outside of the restaurant which are not designated or
24 reserved for their rest.

25 113. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
26 with suitable resting facilities during their work hours, particularly during meal or rest
27 periods. In other words, during the times when Plaintiff and other non-party Aggrieved
28 Employees were legally allowed to forgo assigned tasks, as in during a meal or rest period,

Defendants denied them any area within their restaurant locations to cease work and recover. Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to suitable resting facilities under California law.

114. As a result of Defendants' company-wide policy and/or practice of denying employees any area to rest within their restaurant locations and company-wide failure to provide resting facilities in their restaurants, Plaintiff and other non-party Aggrieved Employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. Defendants' failure to provide suitable resting facilities to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

115. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

116. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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 the employer requires the use of tools or equipment or they 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 may provide and maintain hand tools and equipment customarily required by the particular trade or craft." IWC Wage Order No. 5-2001 also 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."

117. During the relevant time period, Defendants, on a company-wide basis,

1 required Plaintiff and other non-party Aggrieved Employees to obtain and pay for certain
2 certifications, such as an ABC certificate, which were required for their continued
3 employment, as well as associated costs such as training and/or examination fees. For
4 example, Plaintiff complied with this requirement and spent approximately \$20 to obtain an
5 ABC certificate, but Defendants did not reimburse her for the costs of obtaining the
6 certification. Thus, Defendants failed to reimburse Plaintiff and other non-party Aggrieved
7 Employees for the costs of obtaining these certifications, including training and/or
8 examination fees.

9 118. Additionally, during the relevant time period, Defendants required Plaintiff and
10 other non-party Aggrieved Employees to wear uniforms bearing Defendants' company logo,
11 including uniform t-shirts. However, Defendants did not provide their employees with
12 sufficient uniforms to wear for their shifts throughout the week. For example, Defendants
13 only provided Plaintiff with two (2) t-shirts at the time of hire. Because Defendants failed to
14 provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
15 uniform items in relation to their scheduled shifts and for the tasks they were required to
16 perform, Plaintiff and other non-party Aggrieved Employees had to wash their uniforms more
17 frequently than they otherwise would do laundry, and incur expenses in doing so. For
18 example, due to the nature of restaurant work, Plaintiff's uniform t-shirts would become
19 stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was
20 unable to mix these clothes in with her other laundry. As a result, she had to wash her
21 uniform t-shirts separately from her regular clothing, and would spend about \$7 per week at
22 the laundromat for the upkeep of her uniform. Thus, Defendants failed to maintain the
23 uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during
24 their shifts and forced them to incur the cost of maintaining employee uniforms.

25 119. Defendants could have provided Plaintiff and other non-party Aggrieved
26 Employees with an adequate number of uniforms or access to laundering services. Or,
27 Defendants could have reimbursed employees for the costs of their certifications and
28 laundering expenses or provided a uniform maintenance allowance. Instead, Defendants

1 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees.

2 120. Defendants' company-wide policy and/or practice of not reimbursing
3 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
4 and other non-party Aggrieved Employees violates California Labor Code section 2802.
5 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
6 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
8 **EMPLOYMENT**

9 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

10 121. California's Wage Theft Prevention Act was enacted to ensure that employers
11 provide employees with basic information material to their employment relationship at the
12 time of hiring, and to ensure that employees are given written and timely notice of any
13 changes to basic information material to their employment. Codified at California Labor
14 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
15 employer must provide written notice to employees containing basic and material payroll
16 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
17 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
18 overtime, the regular payday designated by the employer, and any allowances claims as part
19 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
20 (C).

21 122. During the relevant time period, Defendants failed to provide Plaintiff and
22 other non-party Aggrieved Employees with written notice that lists all the requisite
23 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

24 123. Defendants' failure to provide Plaintiff and other non-party Aggrieved
25 Employees with written notice of basic information regarding their employment with
26 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
27 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
28 Code sections 2699(a), (f), and (g).

1 **REQUEST FOR JURY TRIAL**

2 Plaintiff requests a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
5 judgment against Defendants, jointly and severally, as follows:

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
8 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/or 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); 204 (by failing to timely pay all earned
17 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
18 termination); 351 (by failing to pay all gratuities owed); 1198 and the applicable IWC Wage
19 Order (by failing to provide suitable resting facilities); 2802 (by failing to reimburse business
20 expenses); and 2810.5 (by failing to provide written notice of information material to
21 employment);

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
23 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
24 204, 226(a), 226.7, 351, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
25 2810.5;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 510, 512(a), 516, 1174(d), 1182.12,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1194, 1197, 1198, 2802, and 2810.5;

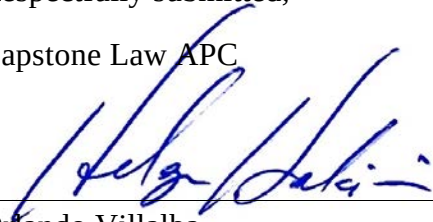
5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: January 23, 2023

Respectfully submitted,

Capstone Law APC

By: 

Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiff Celeste Ramirez

EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

November 18, 2022

VIA ONLINE SUBMISSION

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

Subject: *Celeste Ramirez v. Stinkin Crawfish Restaurants LLC, et al.*

Dear PAGA Administrator:

This office represents Celeste Ramirez in connection with her claims under the California Labor Code. Ms. Ramirez was an employee of STINKIN CRAWFISH RESTAURANTS LLC and/or STINKIN HOLDINGS LLC. For the purposes of this letter, Ms. Ramirez collectively refers to these entities as "SCR."

The employers may be contacted directly at the addresses below:

STINKIN CRAWFISH RESTAURANTS LLC
2518 EAST WORKMAN AVENUE
WEST COVINA, CA 91791

STINKIN HOLDINGS LLC
216 S CITRUS STREET STE 109
WEST COVINA, CA 91791

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

SCR employed Ms. Ramirez as an hourly paid, non-exempt employee from approximately June 2022 to September 2022. Ms. Ramirez worked for SCR as a Server at its restaurant locations in Norwalk and Downey, California. During her employment, Ms. Ramirez typically worked seven (7) hours or more per day, and five (5) days per week. At the time Ms. Ramirez's employment with SCR ended, she earned \$15.96 per hour. Her job duties included, without limitation, providing customer service, taking customer orders, running food to tables, bussing tables, preparing food items, and cleaning and maintaining the restaurant.

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

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

STINKIN CRAWFISH RESTAURANTS LLC and STINKIN HOLDINGS LLC are California limited liability companies. Together, they own and operate a Cajun-style seafood restaurant chain, with approximately 10 “Stinkin Crawfish” restaurant locations in California. Upon information and belief, SCR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in West Covina, California, for all non-exempt, hourly paid employees working for SCR in California, including Ms. Ramirez and other aggrieved employees. At all relevant times, SCR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ramirez and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a 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.

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

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

First, during the relevant time period, SCR maintained and implemented on a company-wide basis, a non-compliant written overtime policy. Specifically, SCR's non-compliant overtime policy fails to correctly state when employees are entitled to receive overtime premiums. The policy states in full: "Overtime is over 40hrs per work week." However, under California law, not only is an employer required to pay employees overtime wages when they work more than forty (40) hours per workweek, they are also required to pay employees overtime when they work more than eight (8) hours in a day. Thus, SCR's written overtime policy is non-compliant on its face, as it fails to mention that employees are entitled to overtime premiums for all of the hours they worked in excess of eight (8) hours in a day.

Second, SCR had, and continues to have, a company-wide policy and/or practice of requiring Ms. Ramirez and other aggrieved employees to perform tasks off-the-clock before their shifts. For example, because SCR's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Ramirez and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Ms. Ramirez was regularly required to wait about two (2) minutes under SCR's control until a POS machine was available for clocking-in, time for which she was not paid. Further, during this time, while Ms. Ramirez waited to clock in for the start of her shift, approximately once per week, Ms. Ramirez was required to discuss work-related issues with managers, such as restaurant operations or her job performance, or she was required to complete tasks such as cleaning tables and filling drinks for customers. These work-related discussions and tasks could take up to five (5) minutes before Ms. Ramirez clocked in for the start of her shift. Thus, SCR failed to track all of the time that employees spent performing work-related tasks before their shifts, and Ms. Ramirez and other aggrieved employees received no compensation for this time.

In addition, SCR had, and continues to have, a company-wide policy and/or practice of requiring Ms. Ramirez and other aggrieved employees to obtain certain certifications, such as an Alcoholic Beverage Control ("ABC") certificate, and to keep their certifications and/or trainings up-to-date, but SCR failed to compensate Ms. Ramirez and other aggrieved employees for this time spent doing so. For example, Ms. Ramirez was required to take an online training course while she was at home, which took approximately one and one half (1.5) hours to complete, but was not compensated for this time worked. Thus, SCR failed to track the time Ms. Ramirez and other aggrieved employees spent completing the mandatory trainings, and Ms. Ramirez and other aggrieved employees received no compensation for this time.

Third, on information and belief, SCR had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. For example, on information and belief, SCR limited the allocation of labor hours based on certain sales metrics, but this allotment was insufficient to staff the restaurants during their hours of operation, meet customer demand, and provide adequate meal period coverage. SCR's uniform use of labor budgets, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and customer demand. SCR also had a practice of failing to schedule meal periods, which further caused Ms. Ramirez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Ramirez worked through all of her meal periods during her employment with SCR in order to keep up with customer demand and complete her duties. Because SCR 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. Ramirez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Ramirez and other aggrieved employees were required to work through and had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Fourth, during the relevant time period, on information and belief, SCR implemented a company-wide policy and/or practice of automatically deducting meal periods from Ms. Ramirez's and other aggrieved employees' time records, instead of requiring employees to clock in and out for meal periods. As a result of this policy, SCR deducted 30-minute meal periods from Ms. Ramirez's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, SCR did not record all hours worked during meal periods, and Ms. Ramirez and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

SCR's failure to pay Ms. Ramirez 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. Ramirez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, SCR had a company-wide policy and/or practice requiring Ms. Ramirez and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts, including waiting to clock in for the start of their shifts and completing work tasks during this time because other employees were using the POS system. Thus, SCR failed to track this time Ms. Ramirez and other aggrieved employees spent working off-the-clock, and Ms. Ramirez and other aggrieved employees received no compensation for this time. Moreover, as stated, Ms. Ramirez and other aggrieved employees were required to complete mandatory trainings and/or obtain certain certifications while at home or outside of their scheduled shifts, but SCR did not compensate Ms. Ramirez and other aggrieved employees for this time spent working off-the-clock.

Additionally, as set forth above, due to SCR's uniform use of labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Ramirez and other aggrieved employees were impeded from taking all uninterrupted meal periods to

which they were entitled and were required to work during their meal periods, time for which they were not paid. Moreover, as stated, on information and belief, SCR, had a company-wide practice and/or policy of automatically deducting meal periods from Ms. Ramirez's and other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted. Thus, SCR systematically failed to pay Ms. Ramirez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SCR did not pay at least minimum wages for all hours worked by Ms. Ramirez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SCR 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, SCR regularly failed to pay at least minimum wages to Ms. Ramirez 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. Ramirez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

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

As stated, SCR had, and continues to have, company-wide policies and/or practices of understaffing its locations, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Ramirez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As result, Ms. Ramirez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Ramirez had to forego nearly all of her meal periods, due to the lack of coverage and in order to meet SCR's expectations.

As also stated, SCR implemented a company-wide policy and practice of automatically deducting meal periods from Ms. Ramirez's and other aggrieved employees' time records, instead of requiring employees to clock in and out for meal periods. As a result of this policy, SCR deducted 30 minutes from Ms.

Ramirez's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, SCR systematically failed to correctly record meal periods.

Moreover, SCR did not provide Ms. Ramirez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Ramirez did not receive second 30-minute meal periods on days she worked in excess of ten (10) hours in one day. Ms. Ramirez 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.

Additionally, SCR had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. SCR took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. SCR's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Ramirez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That SCR required Ms. Ramirez and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because SCR's obligation to provide Ms. Ramirez and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

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

In addition, SCR engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Ramirez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SCR did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SCR did not pay other aggrieved employees at the correct rate of pay for premiums because SCR systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

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

As a result, Ms. Ramirez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout her employment, Ms. Ramirez had to forego her rest periods almost entirely because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods.

SCR also has 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. Ramirez and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that SCR did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SCR did not pay other aggrieved employees at the correct rate of

pay for premiums because SCR failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

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

Further, and separate from these violations, SCR issued uniform wage statements to Ms. Ramirez and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During

the relevant time period, SCR systematically, and on a company-wide basis, issued wage statements to Ms. Ramirez and other aggrieved employees that incorrectly list the employer as “Stinkin Crawfish,” but according to the California Secretary of State’s website, there is no such entity by this name. For example, SCR incorrectly listed the employing entity’s name on Ms. Ramirez’s and other aggrieved employees’ wage statements, including Ms. Ramirez’s wage statements dated June 28, 2022; July 12, 2022; July 26, 2022; August 9, 2022; August 23, 2022; September 6, 2022; and September 13, 2022. See *example paystub below*.

The image is a screenshot of a Gusto Earnings Statement. At the top left is the Gusto logo. Below it is the title "Earnings Statement". To the right, under the heading "Company", is the information for "Stinkin Crawfish" at "2518 E Workman Ave, West Covina, CA 91791" with phone number "626-877-2802". To the right of that, under the heading "Employee", is the name "Celeste Ramirez" above a redacted area. At the bottom left, it says "Pay period: Jun 8, 2022 - Jun 21, 2022 Pay Day: Jun 28, 2022" and "Celeste Ramirez's bank account (. . .) \$299.86".

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 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 the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SCR willfully failed to maintain accurate payroll records for Ms. Ramirez 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, SCR engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Ramirez and other aggrieved employees in violation of section 1198. Furthermore, in light of SCR’s failure to provide Ms. Ramirez and other aggrieved employees with second 30-minute meal periods to which they were entitled, SCR kept no records of meal start and end times for second meal periods.

Because SCR failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Ramirez 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. Ramirez 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. Ramirez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

During the relevant time period, SCR failed to pay Ms. Ramirez 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. Ramirez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

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

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

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

Violation of Labor Code § 351 – Unlawful Tipping Policy

California Labor Code section 351 provides that no employer or agent shall collect, take, or receive any gratuity that is paid, given to, or left for an employee by a patron. Gratuity is deemed to be the sole

property of the employee or employees to whom they are paid, given, or left for. California law permits employer-mandated tip pooling so long as the tip pooling policy is reasonable.

During the relevant time period, as stated, SCR implemented a company-wide employer-mandated tip pooling policy, whereby it required employees to turn over a percentage of their tips or gratuities to managerial employees. Because SCR's employer-mandated tip pooling requires servers to turn over a percentage of their tips or gratuities to managerial employees, who are agents of the employer and do not provide direct table service to patrons, SCR's tip pooling policy is improperly used to compensate SCR. As a result, SCR's tip pooling policy is unreasonable and unfair because it allows managerial employees, SCR's agents, to take or receive gratuities, and thus violates California Labor Code section 351.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

SCR's California restaurant locations are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. SCR could have provided Ms. Ramirez and other aggrieved employees with a suitable resting facility within all of its restaurant locations, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Ms. Ramirez and other aggrieved employees were forced to adjust to areas not conducive to resting, or to search for areas outside of the restaurant which are not designated or reserved for their rest.

SCR did not provide Ms. Ramirez and other aggrieved employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Ms. Ramirez and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, SCR denied them any area within its restaurant locations to cease work and recover. Moreover, SCR did not inform Ms. Ramirez and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of SCR's company-wide failure to provide suitable resting facilities in its restaurant locations, Ms. Ramirez and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. SCR's failure to provide suitable resting facilities to Ms. Ramirez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen 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, SCR, on a company-wide basis, required Ms. Ramirez and other aggrieved employees to obtain and pay for certain certifications, such as an ABC certificate, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Ms. Ramirez complied with this requirement and spent approximately \$20 to obtain an ABC certificate, but SCR did not reimburse her for the costs of obtaining the certification. Thus, SCR failed to reimburse Ms. Ramirez and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Additionally, during the relevant time period, SCR required Ms. Ramirez and other aggrieved employees to wear uniforms bearing the SCR company logo, including uniform t-shirts. However, SCR did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SCR only provided Ms. Ramirez with two (2) t-shirts at the time of hire. Because SCR failed to provide Ms. Ramirez and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Ramirez and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Ramirez's uniform t-shirts would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix these clothes in with other laundry. As a result, she had to wash her uniform t-shirts separately from her regular clothing, and would spend about \$7 per week at the laundromat for the upkeep of her uniform. Thus, SCR failed to maintain uniforms it required Ms. Ramirez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

SCR could have provided Ms. Ramirez and other aggrieved employees with an adequate number of uniforms or access to laundering services. Or, SCR could have reimbursed employees for the costs of their certifications and laundering expenses or provided a uniform maintenance allowance. Instead, SCR passed these operating costs off onto Ms. Ramirez and other aggrieved employees.

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

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and

basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SCR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ramirez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ramirez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Ramirez, 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 SCR for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 351, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. SCR shall pay Ms. Ramirez and all other aggrieved employees employed by SCR at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. SCR shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods.
3. SCR shall conduct a survey or interview all current and former aggrieved employees in California who worked for SCR in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for certification fees, uniform laundering expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. SCR shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. SCR also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. SCR shall reimburse Ms. Ramirez and all aggrieved employees who were required to pay for any business expenses incurred for SCR's benefit, including, but not limited to, certification fees, uniform maintenance, and laundering expenses incurred, as required by Labor Code section 2802.
6. SCR shall pay accrued legal interest to Ms. Ramirez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. SCR shall provide Ms. Ramirez and all aggrieved employees employed by SCR at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. SCR shall pay aggrieved employees the full amount of all gratuities owed to them as indicated by customers, without any deductions due to an unreasonable mandatory tip pooling policy, as set forth in Labor Code section 351.
9. SCR shall implement and provide suitable resting facilities to all aggrieved employees.
10. SCR shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. SCR shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. SCR shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: STINKIN CRAWFISH RESTAURANTS LLC (via U.S. Certified Mail); STINKIN HOLDINGS LLC (via U.S. Certified Mail)

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee
 \$

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
 \$

Total Postage and Fees
 \$

Sent To
STINKIN CRAWFISH RESTAURANTS LLC
 Street and Apt. No., or PO Box No.
2518 E. WORKMAN AVENUE
 City, State, ZIP+4®
WEST COVINA, CA 91791

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

6566 9042 0000 2406 3959
 7022 2410 0000 2406 3959

STINKIN CRAWFISH RESTAURANTS LLC
 2518 EAST WORKMAN AVENUE
 WEST COVINA, CA 91791

Capstone
 LAW APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067

CERTIFIED MAIL®

7022 2410 0000 2406 3959

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
STINKIN CRAWFISH RESTAURANTS LLC
2518 E. WORKMAN AVENUE
WEST COVINA, CA 91791

2. Article Number (Transfer from service label)
7022 2410 0000 2406 3959

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

966 9042 0000 0142 2202

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	
\$	
Total Postage and Fees	
\$	

Postmark
Here

Sent To
STINKIN HOLDINGS LLC
 Street and Apt. No., or PO Box No.
216 S. CITRUS STREET STE 109
 City, State, ZIP+4®
WEST COVINA, CA 91791

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

STINKIN HOLDINGS LLC
 216 S CITRUS STREET STE 109
 WEST COVINA, CA 91791

Capstone
 LAW APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067

7022 2410 0000 2406 3966



CERTIFIED MAIL®

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
STINKIN HOLDINGS LLC
216 S. CITRUS STREET, STE 109
WEST COVINA, CA 91791



9590 9402 1512 5362 2479 38

2. Article Number (Transfer from service label)
7022 2410 0000 2406 3966

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
X		☐ 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		☐ Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™	
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery	
☒ Certified Mail®	☐ Return Receipt for Merchandise	
☐ Collect on Delivery	☐ Signature Confirmation™	
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery	
☐ Insured Mail		
☐ Insured Mail Restricted Delivery (over \$500)		

Domestic Return Receipt

7022 2410 0000 2406 3959

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

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

West Covina, CA 91791

OFFICIAL USE

Certified Mail Fee	\$4.00
Extra Services & Fees (check box, add fee as appropriate)	\$3.25
☒ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$1.92
Total Postage and Fees	\$9.17

Postmark Here
 NOV 18 2022
 11/18/2022

Sent To
 STINKIN CRAWFISH RESTAURANTS LLC
 Street and Apt. No., or PO Box No.
 WEST COVINA, CA 91791
 City, State, ZIP+4®

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

7022 2410 0000 2406 3966

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

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

West Covina, CA 91791

OFFICIAL USE

Certified Mail Fee	\$4.00
Extra Services & Fees (check box, add fee as appropriate)	\$3.25
☒ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$1.92
Total Postage and Fees	\$9.17

Postmark Here
 NOV 18 2022
 11/18/2022

Sent To
 STINKIN HOLDINGS LLC
 Street and Apt. No., or PO Box No.
 210 S. CITRUS STREET STE 109
 City, State, ZIP+4®
 WEST COVINA, CA 91791

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

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
 STINKIN CRAWFISH RESTAURANTS LLC
 2518 E. WORKMAN AVENUE
 WEST COVINA, CA 91791



9590 9402 1512 5362 2479 45

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3959

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent☐ Addressee

B. Received by (Printed Name)

Connie Sanchez

C. Date of Delivery

11-21-22

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
 STINKIN HOLDINGS LLC
 216 S. CITRUS STREET, STE 109
 WEST COVINA, CA 91791



9590 9402 1512 5362 2479 38

2. Article Number (Transfer from service label)

7022 2410 0000 2406 3966

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent☒ Addressee

B. Received by (Printed Name)

[Signature]

C. Date of Delivery

11-21-22

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery (over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt