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County of San Diego

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Clerk of the Superior Court
By E. Lopez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

PAUL ANAYA and HECTOR CARRILLO, on
behalf of others similarly situated and the State
of California under the Private Attorneys General
Act,

Plaintiffs,

vs.

PREMIER FOOD CONCEPTS LLC DBA
LUNA GRILL and DOES 1 through 50,
inclusive,

Defendants.

Case No. 25CU048056C

Hon. Richard S. Whitney
Dept. 68

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: September 10, 2025

1 Plaintiffs PAUL ANAYA and HECTOR CARRILLO, on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiffs”) brings this FIRST
3 AMENDED REPRESENTATIVE ACTION COMPLAINT against Defendants PREMIER FOOD
4 CONCEPTS LLC DBA LUNA GRILL and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a representative action complaint brought under the California Private Attorneys
8 General Act (Labor Code sections 2968 et seq.).

9 2. Defendants underpaid overtime, paid sick leave, and premiums by failing to properly
10 calculate the regular rate of pay.

11 3. Defendants failed to pay Plaintiffs and the aggrieved employees all minimum and
12 overtime wages due to unlawful policies and practices of requiring off-the-clock work and editing
13 employees time records.

14 4. Defendants maintained an unlawful policy and practice of failing to pay all accrued and
15 unused vacation wages.

16 5. Defendants failed to provide, authorize, and/or permit Plaintiffs and the aggrieved
17 employees to take all meal and rest periods to which they were entitled.

18 6. Defendants failed to reimburse Plaintiffs and the aggrieved employees for using their
19 personal cellphones to complete work-related duties.

20 7. Defendants violated California Labor Code section 432.5 by requiring that Plaintiffs
21 and the aggrieved employees sign non-competition agreements prohibited by California law.

22 8. Defendants’ employment policies, practices, and payroll administration systems
23 enabled and facilitated these violations on a company-wide basis with respect to aggrieved employees.

24 9. Plaintiffs seeks to recover the underpaid damages, plus associated penalties, interests,
25 attorney’s fees and costs.

26 **JURISDICTION & VENUE**

27 10. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
28 California Constitution as the causes of action are premised upon violations of California law.

11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

13. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

A. Plaintiffs

15. Plaintiff Carrillo is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2019 to June 2025. Plaintiff worked as a General Manager.

B. Defendants

18. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

19. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

20. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

21. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

22. Plaintiffs and the aggrieved employees worked for Defendants as non-exempt employees and were compensated on an hourly basis.

23. Defendants failed to pay Plaintiffs and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in the unlawful policy and practice of editing Plaintiffs and the aggrieved employees' time records to reflect fewer hours worked. For example, Plaintiff Anaya's time records were edited by management when he traveled to another restaurant or had to attend manager meetings. Furthermore, Plaintiff Carillo alleges that management would often change his clock out time, for example, from 11:00 pm to 10:30 pm.

1 24. Additionally, due to the high demands of the job and understaffing, Plaintiffs and the
2 aggrieved employees routinely worked through their unpaid meal periods. For example, during a busy
3 lunch rush, Plaintiffs would often have no choice but to continue working as they were often short-
4 staffed, and he was required to continue working due to this understaffing. On information and belief,
5 other aggrieved employees were also required to perform work-related tasks during their unpaid meal
6 period. Plaintiffs and aggrieved employees were deprived of minimum wages each time they were
7 denied a compliant meal period and required to clock out but forced to continue working.

8 25. Each time Plaintiffs and the aggrieved employees worked through their unpaid meal
9 period of otherwise engaged in off-the-clock work, this resulted in unpaid hours worked.

10 26. Defendants failed to pay Plaintiffs and the aggrieved employees overtime wages and
11 the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

12 27. First, as stated above, Defendant regularly failed to compensate Plaintiffs and the
13 aggrieved employees for time worked while they were off-the-clock. When Plaintiffs and the
14 aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices
15 resulted in unpaid overtime wages.

16 28. Second, to the extent Defendant committed the same regular rate violations alleged in
17 the meal section below, Defendant failed to pay Plaintiffs and the aggrieved employees overtime
18 wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.
19 Plaintiffs and the aggrieved employees earned quarterly bonuses that were not included in the regular
20 rate of pay. Plaintiffs seek to recover for the corresponding overtime rate on behalf of the affected
21 aggrieved employees.

22 29. Defendants failed to comply with California's paid sick leave laws with respect to the
23 aggrieved employees.

24 30. First, Defendants failed to provide Plaintiffs and the aggrieved employees with all sick
25 leave accrued. Plaintiffs and the aggrieved employees worked off-the-clock, overtime hours that were
26 not accounted for when calculating an employee's accrued paid sick leave. Second, due to Defendants'
27 failure to include all non-discretionary pay, including shift differential pay, Defendants failed to pay
28

1 Plaintiffs’ and, on information and belief, the aggrieved employees paid sick leave at the regular rate
2 of pay.

3 31. Defendants only paid sick leave at the employees' base hourly rate rather than “in the
4 same manner as the regular rate of pay for the worked week in which the employee uses paid sick
5 leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate
6 should have included shift differentials and all other forms of additional non-excludable remuneration.
7 An example of Defendants sick leave underpayment is shown in Plaintiff Carrillo’s wage statement
8 for the pay period of 10/21/2024 to 11/03/2024. During this pay period Plaintiff Carrillo earned a
9 Bonus of \$492.49 in the same pay period he utilized paid sick leave (“Sick Pay”). However, Defendant
10 failed to factor this non-discretionary form of income into Plaintiff Carrillo’s sick leave wages,
11 resulting in underpaid sick leave wages. Therefore, sick leave was not paid out at the lawful rate of
12 pay inclusive of all earnings.

13 32. Defendants maintained an unlawful policy and practice of failing to pay all accrued and
14 unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture
15 of vested vacation time and wages. As described above, Defendants failed to record all of the time that
16 Plaintiffs and other aggrieved employees worked for Defendants and undercounted their hours
17 worked. Consequently, Defendants failed to credit the aggrieved employees with all vacation time
18 they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay
19 inclusive of all earnings.

20 33. Defendants failed to provide compliant meal periods. As a matter of common policy
21 and practice, Defendants failed to pay Plaintiffs and the other aggrieved employees meal periods at
22 the regular rate of pay. Plaintiffs and other aggrieved employees routinely experienced missed, late,
23 short, and interrupted meal periods due to the pressures to keep up with the high demands of the job
24 and understaffing. Due to the lack of coverage as a result of understaffing, Plaintiffs and the aggrieved
25 employees often missed or otherwise experienced non-compliant meal periods. For example, when
26 there’s only one cashier and one manager on duty, Plaintiffs must help out during their lunch periods.
27 For example, Plaintiff Carillo alleges that when there was a large cratering order, he would be forced
28 to work through his entire meal period.

1 34. When Defendants did not provide compliant meal periods, Defendants failed to pay
2 Plaintiffs and the aggrieved employees all meal period premiums at the regular rate of pay. Instead,
3 Defendants only paid aggrieved employees for meal period premiums at their base hourly rate, in
4 violation of California law.

5 35. An example of Defendant's meal period violation is shown in Plaintiff Carrillo's wage
6 statement for the pay period of 10/21/2024 to 11/03/2024. During this pay period, Plaintiff Carrillo
7 earned a \$492.49 bonus for work completed from 10/21/2024 to 11/03/2024. However, Plaintiff
8 Carrillo earned meal period premiums during this period, and the bonus was not included in the regular
9 rate of compensation for the purpose of paying premiums. Instead, Plaintiff Carrillo earned a bonus in
10 the same period he earned overtime hours, however, Plaintiff Carrillo's overtime rate was paid at less
11 than the regular rate of pay.

12 36. Another example of Defendant's meal period violation is shown in Plaintiff Anaya's
13 wage statement for the pay period of 01/27/2025 to 02/09/2025 and 11/18/2024 to 12/01/2024 where
14 Plaintiff Anaya earned a \$2,102.10 bonus for work completed from 09/23/2024 to 12/01/2024.
15 However, Plaintiff Anaya earned meal period premiums during this period, and the bonus was not
16 included in the regular rate of compensation for the purpose of paying premiums. Instead, Plaintiff
17 Anaya earned a bonus in the same period he earned overtime hours, however, Plaintiff Anaya's
18 overtime rate was paid at less than the regular rate of pay. Defendants committed the same regular rate
19 violation against the other aggrieved employees as a matter of common payroll administration and
20 company policy in a matter susceptible to common proof.

21 37. Due to the reasons explained above, including the high demand of the job and
22 understaffing Plaintiffs and the aggrieved employees were not always authorized or permitted to take
23 all their rest periods. Defendants required Plaintiffs and other aggrieved employees to effectively
24 waive or otherwise forego their rest periods contrary to the law.

25 38. To the extent Defendant paid any rest period premium, the premiums were not paid at
26 the regular rate of compensation because the premium did not factor in bonuses, commissions, or other
27 forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in
28 violation of California law.

1 39. Defendants required Plaintiffs and the aggrieved employees to incur costs for work-
2 related purposes without full reimbursement. In direct consequence of their job duties, Plaintiffs and
3 the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and
4 as a matter of policy and practice. Specifically, Defendants required Plaintiffs and the aggrieved
5 employees to download the “Dayforce” application on their personal cellphones in order to view their
6 work schedules and for clocking in and out. Additionally, Plaintiffs and the aggrieved employees
7 would response to messages from the managers regarding work-related tasks. Plaintiffs and the
8 aggrieved employees never received reimbursement for the use of their personal cell phones for work-
9 related tasks.

10 40. Defendants required that Plaintiffs and the aggrieved employees sign non-competition
11 agreements restricting their ability to accept certain work on behalf of themselves or other employers.
12 Non-competition agreements are illegal under California law. Business and Professions Code 16600
13 provides that “every contract by which anyone is restrained from engaging in a lawful profession,
14 trade, or business of any kind is to that extent void.” As such, Defendants violated California Labor
15 Code section 432.5 by requiring that Plaintiffs and the aggrieved employees sign non-competition
16 agreements prohibited by California law.

17 41. These violations create derivative liability for failure to timely pay all wages owed each
18 payday or upon separation of employment.

19 42. Defendants failed to provide accurate itemized wage statements to the aggrieved
20 employees each pay period as a result of the policies and practices set forth in this notice. Defendants
21 violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net
22 wages earned,” as the employees earned wages and premiums that were not paid, resulting in an
23 inaccurate reflection, and recording of “gross wages earned” on those wage statements.

24 43. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
25 employee wage statements each pay period the applicable hourly rates in effect and the number of
26 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
27 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
28 pay stub.

44. Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees' "total hours worked," as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendant's policy and practice of requiring off-the-clock work.

45. Plaintiffs and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiffs and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

46. Because of these policies and practices set forth above, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

47. All outside paragraphs of this Complaint are incorporated into this section.

48. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

49. Plaintiffs reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

50. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*

1 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
2 files suit is always the real party in interest.”])

3 51. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
4 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
7 action brought by an aggrieved employee on behalf of the employee and other current or former
8 employees against whom a violation of the same provision was committed pursuant to the procedures
9 specified in Section 2699.3. “

10 52. Any allegations regarding violations of the IWC Wage Orders are enforceable as
11 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 53. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
14 penalties under the PAGA.

15 54. On or about **June 24, 2025**, Plaintiff Anaya paid the requisite PAGA filing fee and
16 provided written notice (by online electronic filing with the LWDA and by certified mail to
17 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
18 the alleged violations.

19 55. On or about **October 9, 2025**, Plaintiff Carrillo paid the requisite PAGA filing fee and
20 provided written notice (by online electronic filing with the LWDA and by certified mail to
21 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
22 the alleged violations.

23 56. True and correct copies of Plaintiffs’ written PAGA notices, entitled “Notice of Labor
24 Code Violations” are attached hereto as Exhibit 1 and Exhibit 2 and incorporated by reference as
25 though fully set forth herein (the “PAGA notice”).

26 57. To date, neither Plaintiffs nor Plaintiffs’ counsel has received a response to Plaintiffs’
27 written PAGA notice from the LWDA.
28

1 58. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither
2 Plaintiffs nor Plaintiffs' counsel has received written notice by certified mail from any defendant
3 providing a description of any actions taken to cure the alleged violations.

4 59. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these
5 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
6 the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all
7 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

8 60. As set forth in the PAGA notices attached as Exhibit 1-2 and incorporated into this
9 Complaint, Defendants committed the following violations and are liable for all corresponding civil
10 penalties:

- 11 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
12 1197, 1198; IWC Wage Orders.
- 13 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
14 Orders.
- 15 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 16 d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- 17 e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
18 1198; IWC Wage Orders.
- 19 f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
20 1198; IWC Wage Orders.
- 21 g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
22 §§ 204, 204b, 210.
- 23 h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
24 Labor Code §§ 201, 202, 203, 256.
- 25 i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 26 j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- 27 k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
28 Wage Orders.

EXHIBIT 1

Plaintiff Anaya's Notice of Labor Code Violations

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June 24, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- *Electronic Return Receipt* -

Premier Food Concepts LLC D/B/A
Luna Grill
17581 Irvine Blvd., Suite 210
Tustin, California 92780

- *PAGA Notice & Filing Fee* -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **PAUL ANAYA** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

PREMIER FOOD CONCEPTS LLC d/b/a LUNA GRILL

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to

correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of General Manager from about June 2022 to March 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in the unlawful policy and practice of editing Plaintiff and the aggrieved employees' time records to reflect fewer hours worked. For example, Plaintiff's time records were edited by management when he traveled to another restaurant or had to attend manager meetings.

Additionally, due to the high demands of the job and understaffing, Plaintiff and the aggrieved employees routinely worked through their unpaid meal periods. For example, during a busy lunch rush, Plaintiff would often have no choice but to continue working as they were often short-staffed, and he was required to continue working due to this understaffing. On information and belief, other aggrieved employees were also required to perform work-related tasks during their unpaid meal period. Plaintiff and aggrieved employees were deprived of minimum wages each time they were denied a compliant meal period and required to clock out but forced to continue working.

Each time Plaintiff and the aggrieved employees worked through their unpaid meal period of otherwise engaged in off-the-clock work, this resulted in unpaid hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as stated in the “Unpaid Hours Worked” section above, Defendant regularly failed to compensate Plaintiff and the aggrieved employees for time worked while they were off-the-clock. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages.

Second, to the extent Defendant committed the same regular rate violations alleged in the meal section below, Defendant failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff and the aggrieved employees earned quarterly bonuses that were not included in the regular rate of pay. Plaintiff seeks to recover for the corresponding overtime rate on behalf of the affected aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth

in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. First, Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock, overtime hours that were not accounted for when calculating an employee’s accrued paid sick leave. Second, ss stated below, due to Defendants’ failure to include all non-discretionary pay, including shift differential pay, Defendants failed to pay Plaintiff’s and, on information and belief, the aggrieved employees paid sick leave at the regular rate of pay. Defendants only paid sick leave at the employees’ base hourly rate rather than “in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,” as the regular rate should have included shift differentials and all other forms of additional non-excludable remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s

“regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to provide compliant meal periods. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the other aggrieved employees meal periods at the regular rate of pay. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to the pressures to keep up with the high demands of the job and understaffing. Due to the lack of coverage as a result of understaffing, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods. For example, when there’s only one cashier and one manager on duty, Plaintiff must help out during his lunch periods.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular rate of pay. Instead, Defendants only paid aggrieved employees for meal period premiums at their base hourly rate, in violation of California law. An example of Defendants violation are shown below:

Supplemental Earnings Statement					
Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
Bonus	9/23/2024	12/15/2024			\$2,102.10
CA Regular Rate of Pay Adjustments	9/23/2024	9/29/2024	8.3665	2.2979	\$19.23
CA Regular Rate of Pay Adjustments	10/7/2024	10/13/2024	6.2830	2.2711	\$14.27
CA Regular Rate of Pay Adjustments	10/14/2024	10/20/2024	6.2670	2.2662	\$14.20
CA Regular Rate of Pay Adjustments	10/14/2024	10/20/2024	0.3500	4.5323	\$1.59
CA Regular Rate of Pay Adjustments	10/21/2024	10/27/2024	5.6999	2.3212	\$13.23
CA Regular Rate of Pay Adjustments	10/28/2024	11/3/2024	10.1333	2.2889	\$23.19
CA Regular Rate of Pay Adjustments	11/4/2024	11/10/2024	10.3668	2.2007	\$22.81
CA Regular Rate of Pay Adjustments	11/4/2024	11/10/2024	0.8835	4.4014	\$3.89
CA Regular Rate of Pay Adjustments	11/11/2024	11/17/2024	5.8498	3.0625	\$17.91
CA Regular Rate of Pay Adjustments	11/18/2024	11/24/2024	10.0335	2.1897	\$21.97
CA Regular Rate of Pay Adjustments	11/25/2024	12/1/2024	8.7333	2.7572	\$24.08
CA Regular Rate of Pay Adjustments	12/2/2024	12/8/2024	7.0498	2.4040	\$16.95
CA Regular Rate of Pay Adjustments	12/9/2024	12/15/2024			(\$0.01)
CA Regular Rate of Pay Adjustments	12/9/2024	12/15/2024	9.8169	2.1897	\$21.50
Total Hours Paid					

Current 1/27/2025 - 2/9/2025			
Earnings	Hours/Units	Rate	Amount
Regular Earnings			\$2,316.91
Holiday Pay			
Overtime Earnings 1.5x			
Bonus			\$2,102.10
Double Time Earnings			
Meal Break Exception Payout (CA)			
Personal Time Off			
Administrative Leave			
CA Regular Rate of Pay Adjustments			\$214.81

Extract from Plaintiff's Wage Statement for the Pay Period of 01/27/2025 to 02/09/2025

Earnings	Hours/Units	Rate	Amount
Regular Earnings	101.5333		\$2,741.96
Holiday Pay	71.7665	24.5000	\$1,758.28
Overtime Earnings 1.5x	10.0000	26.9500	\$269.50
Bonus	18.7668	36.7500	\$689.68
Bereavement Leave			
Sick Pay			
Double Time Earnings			
Meal Break Exception Payout (CA)	1.0000	24.5000	\$24.50
Personal Time Off			
CA Regular Rate of Pay Adjustments			

Plaintiff's Wage Statement for the Pay Period of 11/18/2024 to 12/01/2024

During this pay period, Plaintiff earned a \$2,102.10 bonus for work completed from 09/23/2024 to 12/01/2024. However, Plaintiff earned meal period premiums during this period, and the bonus was not included in the regular rate of compensation for the purpose of paying premiums. Instead, Plaintiff earned a bonus in the same period he earned overtime hours, however, Plaintiff's overtime rate was paid at less than the regular rate of pay. Defendants committed the same regular rate violation against the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the reasons explained in the "Unpaid Meal Period" section above, including the high demand of the job and understaffing Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods. Defendants required Plaintiff and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

To the extent Defendant paid any rest period premium, the premiums were not paid at the regular rate of compensation because the premium did not factor in bonuses, commissions, or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties

for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring off-the-clock work.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or

should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to download the “Dayforce” application on their personal cellphones in order to view their work schedules and for clocking in and out. Additionally, Plaintiff and the aggrieved employees would respond to messages from the managers regarding work-related tasks. Plaintiff and the aggrieved employees never received reimbursement for the use of their personal cell phones for work-related tasks.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Xavier L. Woodford, Esq.

Cc Plaintiff Paul Anaya
Defendants Human Resources:
(HR@lunagrill.com)

EXHIBIT 2

Plaintiff Carrillo's Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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October 9, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et*
seq.

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Premier Food Concepts LLC D/B/A
Luna Grill
17581 Irvine Blvd., Suite 210
Tustin, California 92780

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **HECTOR CARRILLO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

PREMIER FOOD CONCEPTS LLC d/b/a LUNA GRILL

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of General Manager from about November 2019 to June 2025. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates

that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants engaged in the unlawful policy and practice of editing Plaintiff and the aggrieved employees' time records to reflect fewer hours worked. For example, management would often change the clock-in time to reflect 10:30 p.m. when Plaintiff would actually clock out at 11:00 p.m. Additionally, Plaintiff would get called on her days off when another employee called out of work and she would be required to contact other employees to cover the shift.

Each time Plaintiff and the aggrieved employees worked through their unpaid meal period of otherwise engaged in off-the-clock work, this resulted in unpaid hours worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an

employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as stated in the “Unpaid Hours Worked” section above, Defendant regularly failed to compensate Plaintiff and the aggrieved employees for time worked while they were off-the-clock. When Plaintiff and the aggrieved employees worked more than 8 hours per day or over 40 hours in one week, these practices resulted in unpaid overtime wages.

Second, to the extent Defendant committed the same regular rate violations alleged in the meal and sick sections below, Defendant failed to pay Plaintiff and the aggrieved employees overtime wages at the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff and the aggrieved employees earned quarterly bonuses that were not included in the regular rate of pay. Plaintiff seeks to recover for the corresponding overtime rate on behalf of the affected aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the

workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees.

First, Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. Plaintiff and the aggrieved employees worked off-the-clock, overtime hours that were not accounted for when calculating an employee’s accrued paid sick leave.

Second, as stated below, due to Defendants’ failure to include all non-discretionary pay, including shift differential pay, Defendants failed to pay Plaintiff’s and, on information and belief, the aggrieved employees paid sick leave at the regular rate of pay. Defendants only paid sick leave at the employees’ base hourly rate rather than “***in the same manner as the regular rate of pay for the worked week in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek,***” as the regular rate should have included shift differentials and all other forms of additional non-excludable remuneration. An illustrative example of Defendants sick leave underpayment is shown below:

Earnings			\$559.92
Regular Earnings			
Holiday Pay			
Overtime Earnings 1.5x			
Bonus			\$492.49
Sick Pay			
Double Time Earnings			
Meal Break Exception Payout (CA)			
Personal Time Off			
CA Regular Rate of Pay Adjustments			\$67.43

Earnings	106.2335		\$2,405.68
Regular Earnings	72.0000	20.5000	\$1,476.00
Holiday Pay			
Overtime Earnings 1.5x	20.2335	30.7500	\$622.18
Bonus			
Sick Pay	10.0000	22.5500	\$225.50
Double Time Earnings			
Meal Break Exception Payout (CA)	4.0000	20.5000	\$82.00
Personal Time Off			
CA Regular Rate of Pay Adjustments			
Pre-Tax Deductions			\$244.66

Extracts from Plaintiff's Wage Statement for the Pay Period of 10/21/2024 to 11/03/2024.

Here, Plaintiff earned a Bonus of \$492.49 in the same pay period he utilized paid sick leave ("Sick Pay"). However, Defendant failed to factor this non-discretionary form of income into Plaintiff's sick leave wages, resulting in underpaid sick leave wages. Therefore, sick leave was not paid out at the lawful rate of pay inclusive of all earnings.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. As described above, Defendants failed to record all of the time that Plaintiff and other aggrieved employees worked for Defendants and undercounted their hours worked. Consequently, Defendants failed to credit the aggrieved employees with all vacation time they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal

period after no more than 10 hours of work. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Defendants failed to provide compliant meal periods. As a matter of common policy and practice, Defendants failed to pay Plaintiff and the other aggrieved employees meal periods at the regular rate of pay. Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to the pressures to keep up with the high demands of the job and understaffing. Due to the lack of coverage as a result of understaffing, Plaintiff and the aggrieved employees often missed or otherwise experienced non-compliant meal periods. For example, when there was a large catering order, Plaintiff would be forced to skip his meal period all together and continue working. Additionally, Plaintiff would often be interrupted during his meal period and would have to attend to work duties. For example, if Plaintiff was on his meal period and he got a phone call he would have to attend to the call or if a customer was upset, Plaintiff would have to attend to the customer during his meal period.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and the aggrieved employees all meal period premiums at the regular rate of pay. Instead, Defendants only paid aggrieved employees for meal period premiums at their base hourly rate, in violation of California law. An example of Defendants violation is shown below:

Earnings			\$559.92
Regular Earnings			
Holiday Pay			
Overtime Earnings 1.5x			
Bonus			\$492.49
Sick Pay			
Double Time Earnings			
Meal Break Exception Payout (CA)			
Personal Time Off			
CA Regular Rate of Pay Adjustments			\$67.43

Earnings	106.2335		\$2,405.68
Regular Earnings	72.0000	20.5000	\$1,476.00
Holiday Pay			
Overtime Earnings 1.5x	20.2335	30.7500	\$622.18
Bonus			
Sick Pay	10.0000	22.5500	\$225.50
Double Time Earnings			
Meal Break Exception Payout (CA)	4.0000	20.5000	\$82.00
Personal Time Off			
CA Regular Rate of Pay Adjustments			
Pre-Tax Deductions			\$241.66

Extract from Plaintiff's Wage Statement for the Pay Period of 10/21/2024 to 11/03/2024.

During this pay period, Plaintiff earned a \$492.49 bonus for work completed from 10/21/2024 to 11/03/2024. However, Plaintiff earned meal period premiums during this period, and the bonus was not included in the regular rate of compensation for the purpose of paying premiums. Instead, Plaintiff earned a bonus in the same period he earned overtime hours, however, Plaintiff's overtime rate was paid at less than the regular rate of pay. Defendants committed the same regular rate violation against the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all

nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Due to the reasons explained in the “Unpaid Meal Period” section above, including the high demand of the job and understaffing Plaintiff and the aggrieved employees were not always authorized or permitted to take all their rest periods. Defendants required Plaintiff and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

To the extent Defendant paid any rest period premium, the premiums were not paid at the regular rate of compensation because the premium did not factor in bonuses, commissions, or other forms of remuneration, instead electing to pay aggrieved employees at their base hourly rate, in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendant failed to pay all premiums,

overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable

hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring off-the-clock work.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Specifically, Defendants required Plaintiff and the aggrieved employees to download the “Dayforce” application on their personal cellphones in order to view their work schedules and for clocking in and out. Additionally, Plaintiff and the aggrieved employees would respond to messages from the managers regarding work-related tasks. Plaintiff and the aggrieved employees never received reimbursement for the use of their personal cell phones for work-related tasks.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Non-competition agreements are illegal under California law. Business and Professions Code 16600 provides that “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” Defendants required that Plaintiff and the aggrieved employees sign non-competition agreements restricting their ability to accept certain work on behalf of themselves or other employers. As such, Defendants violated California Labor Code section 432.5 by requiring that Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also

be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Xavier L. Woodford, Esq.

Cc Plaintiff Hector Carrillo
Defendants Human Resources:
(HR@lunagrill.com)