

SUMMONS

(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CULICHITOWN CORPORATION, INC., a California corporation, CULICHITOWN RESTAURANTS, INC., a California corporation, CULICHITOWN ONTARIO, INC., a California corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRIZA HERNANDEZ, individually, and on behalf of all other aggrieved employees,

FOR COURT USE ONLY

(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAY 04 2023

By Jasmine Segura Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
247 WEST 3RD STREET
SAN BERNARDINO, CALIFORNIA 92415

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
SCOTT ERNEST WHEELER (SBN 187998)
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711
LAW OFFICE OF SCOTT ERNEST WHEELER
TELEPHONE: (909) 621-4988
FACSIMILE: (909) 621-4622

DATE: MAY 04 2023
(Fecha)

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): SCOTT ERNEST WHEELER (SBN 187998) LAW OFFICE OF SCOTT ERNEST WHEELER 250 WEST FIRST STREET, SUITE 216 CLAREMONT, CALIFORNIA 91711 TELEPHONE NO.: (909) 621-4988 FAX NO. (Optional): (909) 621-4622 E-MAIL ADDRESS: SEW@SCOTTWHEELERLAWOFFICE.COM ATTORNEY FOR (Name): PLAINTIFF, BRIZA HERNANDEZ		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO MAR 09 2023 BY:  Jasmine Segura, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 WEST 3RD STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN BERNARDINO, CALIFORNIA 92415 BRANCH NAME: SAN BERNARDINO - CIVIL DIVISION		CIVIL SB 2306150 JUDGE: DEPT.:	
CASE NAME: BRIZA HERNANDEZ V. CULICHITOWN CORPORATION, INC., ET AL.,			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-P/PI/D/W/D tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☒ Large number of separately represented parties
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. ☒ Substantial amount of documentary evidence
 d. ☒ Large number of witnesses
 e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. ☐ Substantial postjudgment judicial supervision
 3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
 4. Number of causes of action (specify): **ONE PAGA CAUSE OF ACTION**
 5. This case ☐ is ☒ is not a class action suit.
 6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **3/9/23**

Scott Ernest Wheeler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

By Fax

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

BRIZA HERNANDEZ, individually, and on behalf of
all other aggrieved employees,

CASE NO.: **CIV SB 2306150**

vs.

CULICHITOWN CORPORATION, INC., a California corporation,
CULICHITOWN RESTAURANTS, INC., a California corporation,
CULICHITOWN ONTARIO, INC., a California corporation; and DOES 1
through 50, inclusive,

CERTIFICATE OF ASSIGNMENT

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the **SAN BERNARDINO - CIVIL DIVISION** District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General

☐ Collection

Nature of Action

Ground

- ☐ 1. Adoption
- ☐ 2. Conservator
- ☐ 3. Contract
- ☐ 4. Equity
- ☐ 5. Eminent Domain
- ☐ 6. Family Law
- ☐ 7. Guardianship
- ☐ 8. Harassment
- ☐ 9. Mandate
- ☐ 10. Name Change
- ☐ 11. Personal Injury
- ☐ 12. Personal Property
- ☐ 13. Probate
- ☐ 14. Prohibition
- ☐ 15. Review
- ☐ 16. Title to Real Property
- ☐ 17. Transferred Action
- ☐ 18. Unlawful Detainer
- ☐ 19. Domestic Violence
- ☒ 20. Other Employment
- ☐ 21. THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT.

- Petitioner resides within the district.
- Petitioner or conservatee resides within the district.
- Performance in the district is expressly provided for.
- The cause of action arose within the district.
- The property is located within the district.
- Plaintiff, defendant, petitioner or respondent resides within the district.
- Petitioner or ward resides within the district or has property within the district.
- Plaintiff, defendant, petitioner or respondent resides within the district.
- The defendant functions wholly within the district.
- The petitioner resides within the district.
- The injury occurred within the district.
- The property is located within the district.
- Decedent resided or resides within or had property within the district.
- The defendant functions wholly within the district.
- The defendant functions wholly within the district.
- The property is located within the district.
- The lower court is located within the district.
- The property is located within the district.
- The petitioner, defendant, plaintiff or respondent resides within the district.
- The cause of action arose within the district.

By Fax

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

Culichitown Ontario, Inc.

4423 East Mills Circle

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

Ontario

California

ADDRESS

91764

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed

on

3/9/23

at Claremont

, California.



Signature of Attorney/Party

1 LAW OFFICE OF SCOTT ERNEST WHEELER

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 Email: sew@scottwheelerlawoffice.com

9 jaw@scottwheelerlawoffice.com

10 *Attorneys for Plaintiff*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAR 09 2023

BY: 
Jasmine Sagura, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 BRIZA HERNANDEZ, individually, and on
14 behalf of all other aggrieved employees,

15 Plaintiff,

16 v.

17 CULICHITOWN CORPORATION, INC., a
18 California corporation, CULICHITOWN
19 RESTAURANTS, INC., a California
20 corporation, CULICHITOWN ONTARIO,
21 INC., a California corporation; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No.: **CIV SB 2306150**

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 et seq.]

By Fax

1 Plaintiff Briza Hernandez ("Plaintiff") brings this representative action, individually and on
2 behalf of all other aggrieved employees, to recover civil penalties relating to systematic violations of
3 California wage and hour laws by Culichitown Corporation, Inc. ("Culichitown"), Culichitown
4 Restaurants, Inc. ("Culichitown Restaurants"), and Culichitown Ontario, Inc. ("Culichitown Ontario"
5 or collectively referred to as "Defendants"). Plaintiff makes the following allegations on information
6 and belief, except as to allegations pertaining to Plaintiff individually, which are based on her personal
7 knowledge.

8 INTRODUCTION

9 1. Defendant Culichitown does business as Culichitown Corporation, Inc., and owns and
10 operates one or more casual Mexican dining restaurants in southern California.

11 2. Defendant Culichitown Restaurants does business as Culichitown Restaurants, Inc., and
12 owns and operates one or more casual Mexican dining restaurants in southern California.

13 3. Defendant Culichitown Ontario does business as Culichitown Ontario, Inc., and owns
14 and operates a casual Mexican dining restaurant in Ontario, California.

15 4. In an effort to conserve labor costs, and thereby maximize profits, Defendants have
16 implemented policies and practices that have resulted in systematic violations of California's wage and
17 hour laws.

18 5. For example, Defendants have implemented unlawful policies with respect to meal and
19 rest breaks. Defendants requires their non-exempt employees, who are informed that the needs of the
20 restaurant and its patrons take top priority, to work through meal and rest breaks, to take untimely meal
21 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees
22 have been denied the ability to take meal and rest breaks that they were and are legally entitled to take.

23 6. Moreover, Defendants have uniformly failed to pay Plaintiff and other aggrieved
24 employees proper overtime wages and minimum wages due to the fact that they have willfully turned
25 a blind eye to off-the-clock work that Plaintiff and other aggrieved employees perform as a direct
26 consequence of Defendants' understaffing and imposition of an unreasonable workload.

27 7. Defendants also failed to pay timely wages to current and former employees and has
28 failed to maintain required employee records and provide accurate, itemized wage statements.

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1 interrelation of operations, common management, centralized control of labor relations with respect
2 to Plaintiff and the other aggrieved employees, and common ownership or financial control between
3 all Defendants.

4 15. Plaintiff is informed and believes, and based thereon alleges, in all respects pertinent to
5 this action, Defendants jointly employed Plaintiff and the other aggrieved employees, and as the agent
6 of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent
7 hereto, and as joint employers are jointly liable for the violations as alleged herein.

8 16. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff
9 at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed
10 and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly
11 responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
12 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
13 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
14 capacities of such DOE defendants when ascertained.

15 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

16 17. On December 30, 2022, Plaintiff gave written notice by certified mail pursuant to
17 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
18 ("LWDA") and Defendants, of the specific provisions of the California Labor Code and IWC Wage
19 Order alleged to have been violated, including the facts and theories to support the alleged violations.
20 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
21 (65) days from the December 30, 2023 postmark date of her written notice before filing this action,
22 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
23 commence a representative action under the California Private Attorneys General Act of 2004
24 ("PAGA").

25 18. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
26 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
27 non-exempt employees of Defendants who are California citizens and performed work for Defendants
28 in the State of California at any time within the period beginning one (1) year prior to the December

1 30, 2022 notice Plaintiff provided to the LWDA and Defendants, and ending at the time this action
2 proceeds to final judgment ("statute of limitations period").

3 **FACTUAL ALLEGATIONS**

4 **Failure to Provide Required Meal Periods**

5 **[Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order]**

6 19. During the statute of limitations period, as part of Defendants' illegal policies and
7 practices to minimize labor costs and maximize corporate profits, Defendants have required, permitted
8 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
9 completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise
10 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
11 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

12 20. Defendants have implemented several practices that have caused Plaintiff and aggrieved
13 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
14 systematically understaff its job sites such that aggrieved employees are given so much work to
15 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
16 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
17 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
18 working longer than five (5) hours, to perform work during their meal periods, or return to work after
19 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees
20 need to secure permission before taking a meal period, which is often denied by supervisors.

21 21. There are also frequent occasions when Plaintiff and aggrieved employees need to
22 perform other duties immediately before the time during which they are legally entitled to take a meal
23 period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply drop their
24 job duties and leave a customer, refuse an order or stop cooking in order to take a meal period.
25 Consequently, Plaintiff and aggrieved employees regularly miss meal periods, take late meal periods,
26 return early from meal periods, and even clock out for meal periods but continue working.

27 22. Plaintiff and aggrieved employees need to secure permission before taking a meal
28 period. Plaintiff and aggrieved employees often cannot simply stop taking an order from a customer or

1 stop cooking to take their meal period, and their inability to secure coverage frequently causes them to
2 miss and otherwise take non-compliant meal periods.

3 23. Despite the foregoing, Defendants have implemented a policy and practice of actively
4 discouraging the issuance of meal period premium payments, and in the process, Defendants have
5 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
6 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
7 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular
8 rate of pay for each workday that such a meal period was not authorized or permitted.

9 24. Defendants also implemented an unlawful meal period policy by compensating Plaintiff
10 and aggrieved employees for interrupted meal periods only for their actual work time, as opposed to
11 paying them the legally required premium payments for non-compliant meal periods.

12 **Failure to Provide Required Rest Breaks**

13 **[Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order]**

14 25. During the statute of limitations period, as part of Defendants' illegal policies and
15 practices to minimize labor costs and maximize corporate profits, Defendants have failed to authorize
16 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
17 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

18 26. The same or similar policies and practices that deprive Plaintiff and other aggrieved
19 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
20 take their first and second and third rest breaks. As alleged herein, Defendants understaff its restaurant,
21 which creates so much work for Plaintiff and other aggrieved employees that they are frequently unable
22 to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first secure permission before
23 taking a rest break. Plaintiff and aggrieved employees often cannot simply stop assisting a customer or
24 stop cooking to take a rest break, and their inability to secure coverage causes them to regularly miss
25 and otherwise take non-compliant rest breaks.

26 27. Defendants also do not provide adequate training regarding its legal obligations with
27 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
28 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendants

1 essentially have a non-existent rest break policy, as there is no guidance or specification as to when
2 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
3 shifts.

4 28. Defendants also violated California Labor Code § 226.7, and § 12 of the applicable IWC
5 Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest
6 break, in accordance with the applicable wage order, one additional hour of compensation at the proper
7 regular rate of pay for each workday that a rest break was not provided.

8 **Failure to Pay Overtime Wages**

9 **[Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order]**

10 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
11 Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime, which
12 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
13 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
14 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
15 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
16 in any workweek.

17 30. During the statute of limitations period, Defendants failed to compensate Plaintiff and
18 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
19 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
20 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
21 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
22 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
23 compensating them for this time, unlawful rounding of time worked by Plaintiff and the other aggrieved
24 employees in favor of Defendants, improperly calculating the regular rate of pay based on bonuses,
25 commissions, and other remuneration, and other methods to be discovered.

26 31. In a short-sighted attempt to maximize profits, Defendants have understaffed its
27 restaurant located in Ontario, California. Not only has this practice resulted in widespread missed meal
28 and rest breaks, but it has also caused Plaintiff and other aggrieved employees to perform work while

1 off-the-clock. Defendants have actual or constructive knowledge of this off-the-clock work and subtly
2 condones it. Plaintiff and other aggrieved employees routinely arrive to work early to check so that
3 they are prepared and ready to begin performing their duties promptly at the start of their shifts, as they
4 must be pursuant to the requirements of Defendants. Defendants know that Plaintiff and other aggrieved
5 employees perform this work off-the-clock.

6 32. Defendants have knowingly and willfully refused to perform its obligations to
7 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
8 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

9 **Failure to Pay Minimum Wages**

10 [Labor Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order]

11 33. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
12 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
13 period is unlawful.

14 34. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
15 employees were precisely at California minimum wage. Based on this common practice, Defendants
16 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
17 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
18 as requiring them to work through meal and rest breaks but not compensating them for this time,
19 unlawful rounding of time worked by Plaintiff and the other aggrieved employees in favor of
20 Defendants, and failing to include this time in all hours worked, and other methods to be discovered.

21 35. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
22 of the applicable IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff
23 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
24 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
25 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
26 them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

27 **Failure to Timely Pay Wages During Employment**

28 [Labor Code § 204]

1 36. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
2 15th days of any calendar month, Defendants are required to pay its nonexempt employees between the
3 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
4 also provides that for all labor performed between the 16th and 26th days of any calendar month,
5 Defendants are required to pay their non-exempt employees between the 1st and 10th day of the
6 following calendar month. In addition, California Labor Code § 204 provides that all wages earned for
7 labor in excess of the normal work period shall be paid no later than the payday of the next regular
8 payroll period.

9 37. During the statute of limitations period, Defendants have knowingly and willfully failed
10 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
11 regular payroll period as required by California Labor Code § 204, including but not limited to,
12 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
13 of the regular rate of pay, and for work performed off-the-clock.

14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

15 **[Labor Code §§ 201, 202 and 203]**

16 38. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to pay
17 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
18 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
19 discharge are due and payable immediately.

20 39. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
21 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
22 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
23 which case the employee is entitled to his or her wages at the time of quitting.

24 40. California Labor Code § 203 provides that if an employer willfully fails to pay, in
25 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
26 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
27 employee at the same rate for up to 30 workdays.

28 41. During the statute of limitations period, Defendants have willfully failed to pay accrued

1 wages and other compensation to Plaintiff and other aggrieved employees in accordance with California
2 Labor Code §§ 201 and 202. On information and belief, Defendants do not have sufficient policies to
3 provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
4 required under California law. Defendants continue to fail to properly compensate other aggrieved
5 employees for all hours worked when due, overtime wages, and compensation for non-compliant meal
6 and rest breaks, Defendants also willfully failed and continue to fail to pay accrued wages and other
7 compensation to Plaintiff and other aggrieved employees in accordance with California Labor Code §§
8 201 and 202.

9 **Failure to Furnish Accurate Itemized Wage Statements**

10 **[Labor Code § 226(a) and § 7 of the applicable IWC Order]**

11 42. During the statute of limitations period, Defendants routinely failed to provide Plaintiff
12 and other aggrieved employees with timely and accurate itemized wage statements. Defendants' pay
13 stubs have violated California Labor Code § 226. Next, Defendants were and are not providing Plaintiff
14 and other aggrieved employees with proper meal periods and rest breaks but intentionally fails to
15 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
16 for each non-compliant meal period or rest break. Moreover, Defendants have failed to pay proper
17 overtime wages to Plaintiff and other aggrieved employees and their wage statements therefore fail to
18 reflect the correct hourly rates worked by Plaintiff and other aggrieved employees.

19 43. In order to conceal its wage theft, Defendants knowingly and intentionally failed to
20 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
21 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

22 44. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
23 Defendants to provide timely and accurate itemized wage statements because it prevented them from
24 discovering the scope and extent of Defendants' violations of California wage and hour laws, prevented
25 them from being able to accurately determine the gross wages earned, the total hours worked, all
26 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and
27 the corresponding number of hours worked at each hourly rate and the balance and available amount
28 of sick leave.

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1 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

2 **[Cal. Lab. Code § 2802]**

3 48. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
4 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
5 his or her duties, or of his or her obedience to the directions of the employer.

6 49. During the Statute of Limitations Period, Defendants failed to reimburse aggrieved
7 employees for the usage of their personal cellular phones in addition to personal protective equipment
8 during the COVID-19 pandemic, including face masks and disposable gloves and other supplies.
9 Defendants did not reimburse Plaintiff and other aggrieved employees for the costs of the expenditures
10 relating to their cellular phones, face masks and other supplies.

11 **Failure to Provide Suitable Seating**

12 **[IWC Wage Order No. 5-2001, §14]**

13 50. IWC Wage Order No. 5-2001, § 14 provides:

14 “Where practicable and consistent with applicable industry-wide standards,
15 all working employees shall be provided with suitable seats when the nature
16 of the work reasonably permits the use of seats.

17 51. Defendants failed to provide suitable seating by not providing any seats or stools for
18 those aggrieved employees working as hostesses. The nature of the work reasonably permits the use of
19 seats for aggrieved employees who work as hostesses regarding the performance of their duties and
20 responsibilities. To the extent that the use of seats could interfere with their work duties, at all times
21 herein it is and has been reasonable for Defendants to place seats in reasonable proximity to work areas
22 to be used the aggrieved employees when doing so would not interfere with their job duties and
23 responsibilities.

24 **Failure to Provide Employment Records**

25 **[Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7]**

26 52. California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 5-2001, § 7
27 require California employers to provide to copies of their personnel files and certain other
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1 employment records upon their request.

2 53. On October 19, 2022 and on November 22, 2022, Plaintiff, through her counsel of
3 record, requested copies of these records from Defendants. Authorization forms, expressly permitting
4 the disclosure of these records to counsel, signed by Plaintiff, were submitted to Defendants along
5 with the request. No response was received from Defendants regarding the request for the payroll
6 records and personnel file.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

9 **[Cal. Lab. Code § 2698 *et seq.*]**

10 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendants)**

11 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 53 above.

13 55. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
14 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
15 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
16 was employed by Defendants and one or more of the alleged California Labor Code violations was
17 committed against Plaintiff during the statute of limitations period.

18 55. Plaintiff seeks to recover civil penalties through a representative action permitted by
19 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
20 certification is not required.

21 56. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
22 penalties from Defendants in a representative action for the violations set forth above, including but
23 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512,
24 558, 1174, 1194 and for the violations of the applicable IWC Wage Order alleged above.

25 57. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
26 against Defendant for violations of California Labor Code provisions for which a civil penalty is
27 specifically provided, including but not limited to, the following:

28 a. Pursuant to California Labor Code § 210, for violations of California Labor

Code § 204, Defendant is subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee, and two hundred dollars (\$200) per employee for violations in subsequent pay periods.

b. Pursuant to California Labor Code § 226.3, for violations of California Labor Code § 226(a), Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to California Labor Code § 1174.5, for violations of California Labor Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

58. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

59. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, and 1197, and for the violations of the applicable IWC Wage Order alleged above.

60. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

61. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees and the State of California, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
3. For such further relief that the Court may deem just and proper.

DATED: March 9, 2023

THE LAW OFFICE OF SCOTT ERNEST WHEELER



SCOTT ERNEST WHEELER

Attorneys for Plaintiff