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County of San Diego
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO
11

12 OSCAR BARBA, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
14 employees,

15 Plaintiff,

16 vs.

17 JJC FOODS, LLC, a California limited
liability company; CENTURY FAST
18 FOODS, INC., a California corporation;
CENTURY FAST FOODS, LLC, a
19 California limited liability company;
CENTURY FAST FOODS IV, LLC, a
20 California limited liability company; WEST
SIDE FAST FOODS, LLC, a California
21 limited liability company; and DOES 1
through 10, inclusive,
22

23 Defendants.
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Case No.: 37-2023-00009386-CU-OE-CTL

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Oscar Barba, as an aggrieved employee and on behalf of the State of California
2 and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on December 29, 2022, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

THE PARTIES

6. Plaintiff Oscar Barba is a resident of San Diego, in San Diego County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Restaurant General Manager from approximately June 2021 to November 2022. Plaintiff worked for Defendants at one of their Taco Bell restaurants located in San Diego, California. During his employment, Plaintiff typically worked ten (10) or more hours per day and four (4) days per week. At the time Plaintiff's employment with Defendants ended, he earned approximately \$21.00 per hour. His job duties included, without limitation, fulfilling food orders, taking inventory, stocking supplies, providing customer service, and training crew members.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with an "EMPLOYMENT-AT-WILL AND ARBITRATION AGREEMENT" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process, including Grooming and Uniform Standards, Acknowledgement of Receipt of MPN Information, Team Member Code of Conduct, and At-Will Policy, among other documents. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along

1 with all of the other onboarding documents.

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

5 9. CENTURY FAST FOODS, INC. was and is, upon information and belief, a
6 California corporation, and at all times hereinafter mentioned, an employer whose employees
7 are engaged throughout this county and the State of California.

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

11 11. CENTURY FAST FOODS IV, LLC was and is, upon information and belief, a
12 California limited liability company, and at all times hereinafter mentioned, an employer whose
13 employees are engaged throughout this county and the State of California.

14 12. WEST SIDE FAST FOODS, LLC was and is, upon information and belief, a
15 California limited liability company, and at all times hereinafter mentioned, an employer whose
16 employees are engaged throughout this county and the State of California.

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

21 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
22 were the partners, agents, owners, or managers of JJC FOODS, LLC; CENTURY FAST
23 FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY FAST FOODS IV, LLC; and
24 WEST SIDE FAST FOODS, LLC, at all relevant times.

25 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, JJC FOODS, LLC;
27 CENTURY FAST FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY FAST FOODS
28 IV, LLC; WEST SIDE FAST FOODS, LLC, and/or DOES 1 through 10 (collectively,

1 “Defendants” or “JJC”), each acting as the agent, employee, alter ego, and/or joint venturer of,
2 or working in concert with, each of the other co-Defendants and was acting within the course
3 and scope of such agency, employment, joint venture, or concerted activity with legal authority
4 to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
5 represent, the official policy of Defendants.

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

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

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

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

- 27 (a) jointly exercised meaningful control over the work performed by Plaintiff
28 and other non-party Aggrieved Employees;

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

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

19 21. JJC FOODS, LLC; CENTURY FAST FOODS, INC.; CENTURY FAST
20 FOODS, LLC; CENTURY FAST FOODS IV, LLC; WEST SIDE FAST FOODS, LLC; and
21 DOES 1 through 10 are therefore alter egos of each other.

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

25 23. Plaintiff further alleges, upon information and belief, that Defendants JJC
26 FOODS, LLC; CENTURY FAST FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY
27 FAST FOODS IV, LLC; and WEST SIDE FAST FOODS, LLC are alter egos of each other for
28 the following reasons:

- 1 (a) According to the California Secretary of State’s website
2 (<https://bizfileonline.sos.ca.gov/>), CENTURY FAST FOODS, INC.;
3 CENTURY FAST FOODS, LLC; CENTURY FAST FOODS IV, LLC;
4 and WEST SIDE FAST FOODS, LLC have the same principal address,
5 “10350 SANTA MONICA BLVD., [SUITE 206], LOS ANGELES, CA
6 90025”;
- 7 (b) According to their most recent “Statement of Information” forms filed
8 with the California Secretary of State, JJC FOODS, LLC; CENTURY
9 FAST FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY
10 FAST FOODS IV, LLC; and WEST SIDE FAST FOODS, LLC share the
11 same officers and/or directors, including, but not limited to, James [R.]
12 DeBoard and Robert M. Brunson, who serve as Chief Executive Officer,
13 Manager, Director, and/or Secretary;
- 14 (c) According to the California Secretary of State’s website, JJC FOODS,
15 LLC; CENTURY FAST FOODS, INC.; CENTURY FAST FOODS,
16 LLC; CENTURY FAST FOODS IV, LLC; and WEST SIDE FAST
17 FOODS, LLC share the same agent for service of process, James R.
18 DeBoard; and
- 19 (d) On information and belief, JJC FOODS, LLC; CENTURY FAST
20 FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY FAST
21 FOODS IV, LLC; and WEST SIDE FAST FOODS, LLC utilize the same
22 standardized employment forms and issue the same employment policies.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 24. Defendants are franchisees of Taco Bell restaurants and have approximately 20
25 restaurants in California. Upon information and belief, Defendants maintain a single,
26 centralized Human Resources (“HR”) department at their corporate headquarters in Beverly
27 Hills, California, or Los Angeles, California, which is responsible for recruiting and hiring of
28 new employees, and communicating and implementing Defendants’ company-wide policies,

1 including timekeeping policies and meal and rest period policies, to employees throughout
2 California.

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

10 26. Upon information and belief, Defendants maintain a centralized Payroll
11 department at their corporate headquarters in Beverly Hills, California, or Los Angeles,
12 California, which processes payroll for all non-exempt, hourly paid employees working for
13 Defendants at their various locations in California, including Plaintiff and other non-party
14 Aggrieved Employees. Based upon information and belief, Defendants issue the same
15 formatted wage statements to all non-exempt, hourly paid employees in California, irrespective
16 of their work locations. Upon information and belief, Defendants process payroll for departing
17 employees in the same manner throughout the State of California, regardless of the manner in
18 which each employee's employment ends.

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

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

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

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

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive certain wages for overtime compensation and that they were not receiving certain wages
3 for overtime compensation.

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

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

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

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

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

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

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

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

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

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

1 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
2 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
3 compensation, but failed to include all forms of remuneration in calculating the regular rate of
4 pay for sick leave pay.

5 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that other non-party Aggrieved Employees were entitled to one day's rest
7 in seven. In violation of the California Labor Code, Defendants required other non-party
8 Aggrieved Employees to work more than six consecutive days without a day of rest, where the
9 total hours worked exceeded 30 hours in any week or six hours in any one day thereof.

10 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive reimbursement for all business-related expenses and costs they incurred during the
13 course and scope of their employment and that they did not receive reimbursement of applicable
14 business-related expenses and costs incurred.

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

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

27 44. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
28 person who was employed by the alleged violator and against whom one or more of the alleged

violations was committed.”

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

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

(a) The aggrieved employee shall give written notice by online filing (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

(a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be accompanied
7 by a filing fee of seventy-five dollars (\$75).

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

16 48. On December 29, 2022, Plaintiff provided written notice by online filing to the
17 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
20 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
21 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
22 PAGA Case Number LWDA-CM-926655-22. A true and correct copy of Plaintiff's written
23 notice to the LWDA and Defendants dated December 29, 2022, is attached hereto as "Exhibit
24 1."

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

28 50. Thus, Plaintiff has satisfied the administrative prerequisites under California

1 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
2 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
3 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

4 51. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare Commission
7 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
8 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
9 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
10 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
11 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
12 criminal penalty provided by law.” Plaintiff, acting in the public interest as a private attorney
13 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
14 himself, all other non-party Aggrieved Employees, and the State of California against
15 Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552, and 1198, and the
16 applicable IWC Wage Order. Plaintiff, acting in the public interest as private attorney general,
17 does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for
18 violations of Labor Code sections 510, 512(a), 516, 551, 552, and 1198, and the applicable IWC
19 Wage Order.

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

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

26 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
28 attorney general, seeks assessment and collection of civil penalties for himself, all other non-

1 party Aggrieved Employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552,
3 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

4 **FIRST CAUSE OF ACTION**

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

6 **(Against all Defendants)**

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

9 56. California Labor Code §§ 2698, *et seq.* (“PAGA”) permit Plaintiff to recover
10 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
11 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
12 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
13 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
14 Code sections not found in section 2699.5, including sections 246, 516, and 1182.12.

15 57. Defendants’ conduct, as alleged herein, violates numerous sections of the
16 California Labor Code, including, but not limited to, the following:

- 17 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
18 Wage Order for Defendants’ failure to compensate Plaintiff and other
19 non-party Aggrieved Employees with all required overtime, as set forth
20 below;
- 21 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
22 IWC Wage Order for Defendants’ failure to include all forms of
23 remuneration in the “regular rate” of pay as required by law for purposes
24 of paying overtime wages and/or meal and rest period premiums to
25 Plaintiff and other non-party Aggrieved Employees, as set forth below;
- 26 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
27 applicable IWC Wage Order for Defendants’ failure to compensate
28 Plaintiff and other non-party Aggrieved Employees with at least

1 minimum wages for all hours worked, as set forth below;

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

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

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

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

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

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

21 (a) Violation of Labor Code section 246 for failure to properly calculate the
22 sick leave paid to Plaintiff and/or other non-party Aggrieved Employees,
23 as set forth below;

24 (j) Violation of Labor Code sections 551 and 552 for failure to provide one
25 day's rest in seven to other non-party Aggrieved Employees, as set forth
26 below; and

27 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
28 and other non-party Aggrieved Employees for all business expenses

necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

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

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

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

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

7 64. First, during the relevant period, Defendants had, and continue to have, a
8 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
9 Employees to perform various work-related tasks while off-the-clock before and after their
10 shifts. For example, about three (3) times per week before he clocked in for his shifts and/or
11 after he clocked out for his shifts, Plaintiff was required to travel to Defendants' other Taco Bell
12 locations 10-20 minutes away to pick up ingredients and supplies needed at his location. Thus,
13 Defendants failed to track this time spent working before or after scheduled shifts, and Plaintiff
14 and other non-party Aggrieved Employees received no compensation for this time.

15 65. Second, during the relevant period, Defendants had, and continue to have, a
16 company-wide policy and/or practice of understaffing their locations while assigning heavy
17 workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees
18 with adequate meal period coverage. As a result of this lack of meal period coverage, Plaintiff
19 and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute
20 meal periods during shifts when they were entitled to receive a meal period. For example,
21 Plaintiff worked through his meal periods 3-4 times per week because he was required to
22 continue performing his duties, including preparing food orders, attending to customers, and
23 restocking supplies, during his unpaid meal periods. As a further example, Plaintiff's meal
24 periods were cut short and/or interrupted on a regular basis to answer questions from staff
25 members and to go back to performing his duties due to the lack of coverage. Additionally,
26 Defendants, on a company-wide basis, had a practice of failing to schedule meal periods which,
27 in conjunction with the assignment of heavy workloads, further caused Plaintiff and other non-
28 party Aggrieved Employees to not be relieved of their duties for compliant meal periods. Thus,

1 Plaintiff and other non-party Aggrieved Employees were required to work through and/or had
2 their meal periods interrupted in order to complete their assigned workloads. Defendants did
3 not pay Plaintiff and other non-party Aggrieved Employees for the time they continued to
4 perform tasks during meal periods.

5 66. In addition, on information and belief, Defendants' company-wide timekeeping
6 system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours
7 worked when their meal periods were shortened or interrupted, because the system locked out
8 Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period,
9 and would not permit them to clock back in from a meal period until 30 minutes had elapsed.
10 Thus, Defendants' timekeeping system further prevented Plaintiff and other non-party
11 Aggrieved Employees from recording all hours worked when their meal periods were shortened
12 or interrupted.

13 67. Third, on information and belief, Defendants maintained a company-wide on-
14 premises meal period policy, which mandated that Plaintiff and other non-party Aggrieved
15 Employees remain on Defendants' premises during their unpaid meal periods. Because Plaintiff
16 and other non-party Aggrieved Employees were restricted from leaving the premises during
17 meal periods, they were denied the ability to use their meal periods freely for their own
18 purposes. For example, Plaintiff and other non-party Aggrieved Employees were unable to take
19 compliant meal periods because they were unable to leave the work premises. Thus, Defendants
20 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
21 their unpaid meal periods.

22 68. Fourth, on information and belief, because Defendants frowned upon employees
23 accruing meal period penalties, Defendants pressured Plaintiff and other non-party Aggrieved
24 Employees to clock out for meal periods, on threat of discipline, even when they did not receive
25 a compliant meal period, in order to strictly limit meal penalties that Defendants would
26 otherwise owe. For example, Plaintiff's area manager instructed Plaintiff to record compliant
27 meal periods on days he missed his meal periods or when his meal periods were interrupted/cut
28 short upon threat of discipline, up to and including termination. Thus, Plaintiff and other non-

1 party Aggrieved Employees were required to perform their assigned tasks off-the-clock because
2 Defendants wanted to avoid paying penalties for missed or shortened meal periods.

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

9 70. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
10 Employees the correct overtime rates for the recorded overtime hours that they generated. In
11 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees
12 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in
13 violation of the California Labor Code, Defendants failed to incorporate all remunerations,
14 including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate
15 of pay for purposes of calculating the overtime wage rate. Therefore, during times when
16 Plaintiff and other non-party Aggrieved Employees worked overtime and received these other
17 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
18 required.

19 71. For example, Defendants paid Plaintiff and other non-party Aggrieved
20 Employees nondiscretionary bonuses which were listed on Plaintiff's and other non-party
21 Aggrieved Employees' wage statements as "Bonus." As a Restaurant General Manager,
22 Plaintiff was eligible to receive a bonus depending on certain metrics, such as how well his
23 location met certain customer satisfaction and profit goals. During pay periods that Plaintiff
24 and other non-party Aggrieved Employees were paid overtime wages, Defendants did not
25 incorporate the nondiscretionary bonuses into Plaintiff's and other non-party Aggrieved
26 Employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for
27 overtime hours worked. Specifically, Defendants paid Plaintiff and other non-party Aggrieved
28 Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.

Defendants' failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other non-party Aggrieved Employees on a company-wide basis.

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

FAILURE TO PAY MINIMUM WAGES

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

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

74. As stated, during the relevant time period, Defendants maintained policies and/or practices requiring Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock prior to the start of their shifts and after the end of their shifts, such as traveling to other Taco Bell locations to pick up ingredients and supplies. Further, as also stated above, due to Defendants' policies and/or practices of understaffing their locations while assigning heavy workloads, failing to schedule meal periods, and requiring employees to stay on the work premises during meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

75. Also, as stated, in order to prevent employees from accruing meal period

1 penalties, upon information and belief, Defendants' management pressured employees to record
2 compliant meal periods when meal periods were missed, short, and/or interrupted to reflect
3 compliant meal periods. In addition, as stated, Defendants' company-wide timekeeping system
4 prevented Plaintiff and other non-party Aggrieved Employees from entering time worked during
5 meal periods because the system locked out Plaintiff and other non-party Aggrieved Employees
6 for a full 30 minutes. Thus, Defendants systematically failed to pay Plaintiff and other non-
7 party Aggrieved Employees for actual hours worked during unpaid meal periods because these
8 hours were not always correctly recorded.

9 76. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
10 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
11 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
12 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
13 1197, and 1198.

14 77. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
16 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

19 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

23 79. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is not
27 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
28 and the employee. Under California law, first meal periods must start after no more than five

1 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

2 80. At all relevant times herein set forth, California Labor Code sections 226.7,
3 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
4 meal period mandated by an applicable order of the IWC.

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

12 82. First, during the relevant time period, as stated, Defendants had, and continue to
13 have, company-wide policies and/or practices of understaffing while assigning heavy
14 workloads, and failing to schedule meal periods, which has resulted in a lack of meal period
15 coverage. As a result, Plaintiff and other non-party Aggrieved Employees had to work through
16 all or part of their meal periods, had their meal periods interrupted, and/or wait extended periods
17 of time before taking meal periods to which they were entitled. For example, due to Defendants'
18 policy and/or practice of understaffing while assigning heavy workloads, Plaintiff missed his
19 meal periods entirely 3-4 times per week, and, when he was able to take them, were often
20 interrupted and/or cut short in order to prepare food orders, assist crew members, and restock
21 supplies.

22 83. Furthermore, because Defendants frowned upon employees accruing meal period
23 penalties, Defendants' management pressured employees to clock out for meal periods to reflect
24 compliant meal periods, upon threat of discipline (up to and including termination), regardless
25 of whether they had received a compliant meal period, in order to strictly limit meal penalties
26 that would need to be paid by Defendants. For example, Plaintiff was required to clock out for
27 his meal period to record that he had received compliant meal periods on shifts when he had
28 not, in fact, received these timely meal periods.

1 84. Second, as stated, on information and belief, Defendants maintained and
2 implemented a company-wide on-premises meal period policy for employees, which mandated
3 that Plaintiff and other non-party Aggrieved Employees remain on the work premises during
4 meal periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from
5 leaving the premises during meal periods, they were denied the ability to use their meal periods
6 freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff
7 and other non-party Aggrieved Employees during meal periods.

8 85. Third, on information and belief, as stated, Defendants' company-wide
9 timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
10 recording all hours worked when their meal periods were shortened or interrupted, because the
11 system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out
12 for a meal period, and would not permit them to clock back in from a meal period before 30
13 minutes had elapsed. For example, Plaintiff had his meal periods interrupted or cut short to go
14 back to assisting customers and crew members, in order to keep up with customer demand and
15 handle the heavy workload, but was unable to record that his meal period was shortened.

16 86. Fourth, Defendants did not provide Plaintiff and other non-party Aggrieved
17 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
18 hours in one day. For example, Plaintiff did not receive second 30-minute meal periods on days
19 he worked in excess of ten (10) hours in one day. Plaintiff and other non-party Aggrieved
20 Employees did not sign valid meal period waivers on days that they were entitled to meal
21 periods and were not relieved of all duties.

22 87. Defendants knew or should have known that as a result of their policies and
23 practices, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all
24 duties to take timely, uninterrupted meal periods. Defendants further knew or should have
25 known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period
26 premiums when meal periods were missed, late, short, and/or interrupted.

27 88. Moreover, Defendants engaged in a company-wide practice and/or policy of not
28 paying all meal period premiums owed when compliant meal periods are not provided. Because

1 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
2 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
3 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees premium
4 pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other
5 non-party Aggrieved Employees at the correct rate of pay for premiums because Defendants
6 systematically failed to include all forms of compensation, such as incentive pay,
7 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

8 89. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
9 Employees compliant meal periods and failed to pay the full meal period premiums due.
10 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
11 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
12 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
13 (f), and (g).

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

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

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

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

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

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

5 93. Pursuant to the applicable IWC Wage Order and California Labor Code section
6 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
7 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
8 required rest period was not authorized and permitted.

9 94. During the relevant time period, Defendants regularly failed to authorize and
10 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
11 per each four (4) hour period worked or major fraction thereof. As with meal periods,
12 Defendants’ company-wide practices of understaffing and assigning heavy workloads prevented
13 Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to
14 take compliant rest periods. Additionally, Defendants also failed to schedule rest periods,
15 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
16 to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to
17 take rest periods.

18 95. Furthermore, upon information and belief, Defendants maintained a company-
19 wide on-premises rest period policy, which effectively required that Plaintiff and other non-
20 party Aggrieved Employees remain on Defendants’ premises during their rest periods. Because
21 Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises
22 during rest periods, they were denied the ability to use their rest periods freely for their own
23 purposes, such as running personal errands. Thus, Defendants effectively maintained control
24 over Plaintiff and other non-party Aggrieved Employees during rest periods.

25 96. As a result, Plaintiff and other non-party Aggrieved Employees would work
26 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
27 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.
28 For example, Plaintiff had to forego his rest periods almost entirely because the restaurant was

1 busy and did not have coverage.

2 97. Defendants have also engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods. Alternatively, to the
6 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
7 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
8 other non-party Aggrieved Employees at the correct rate of pay for premiums because
9 Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary
10 bonuses, and/or other forms of remuneration, in the regular rate of pay.

11 98. Accordingly, Defendants failed to authorize and permit all compliant rest periods
12 and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable
13 IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other
14 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
15 Labor Code sections 558 and/or 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

17 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

23 100. During the relevant time period, Defendants have knowingly and intentionally
24 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
25 inaccurate wage statements. For example, Defendants issued uniform wage statements to
26 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
27 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
28 the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or

1 paid sick leave, and the corresponding number of hours worked at each hourly rate.
2 Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

3 101. Because Defendants did not record the time Plaintiff and other non-party
4 Aggrieved Employees spent working off-the-clock and deducted time from their records for
5 meal periods that were interrupted and/or missed (and therefore time for which they should have
6 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
7 Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and
8 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
9 total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in
10 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during
11 the pay period and the corresponding accurate number of hours worked at each hourly rate, in
12 violation of section 226(a)(9).

13 102. Additionally, because Defendants did not calculate Plaintiff's and other non-
14 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
15 wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct
16 amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount
17 of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
18 applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime
19 wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

28 104. California Labor Code section 1174(d) provides that "[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

105. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

106. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.

1 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
2 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

4 **VIOLATION OF LABOR CODE SECTION 204**

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

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

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

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

25 **FAILURE TO PAY WAGES UPON TERMINATION**

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

27 111. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two (72)
3 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
4 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
5 quitting.

6 112. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
7 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
8 above, including but not limited to, overtime wages, minimum wages, meal and rest period
9 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
10 hours of their leaving Defendants' employ.

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

17 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

18 **VIOLATION OF LABOR CODE SECTION 246**

19 114. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
20 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
21 days from the commencement of employment with paid sick days, to be accrued at least one
22 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
23 employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent
24 paid leave or paid time off) in each year of the employee's employment. Further, Labor Code
25 section 246(l) provides that an employer shall calculate paid sick leave by using one of two
26 calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same
27 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
28 whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick

time for nonexempt employees shall be calculated 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 of employment."

115. During the relevant time period, Defendants did not pay Plaintiff and/or other non-party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and/or other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Plaintiff and/or other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid Plaintiff and/or other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

116. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or other non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code section 246(l).

117. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN

VIOLATION OF LABOR CODE SECTIONS 551 and 552

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

119. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do

1 not exceed 30 hours in any week or six hours in any one day thereof.

2 120. During the relevant period, Defendants required other non-party Aggrieved
3 Employees to work approximately six (6) or more hours per day and seven (7) consecutive days
4 in a workweek. Because other non-party Aggrieved Employees worked over thirty (30) hours
5 per week and over six (6) hours in any one day in a workweek, they were not exempt from the
6 day-of-rest requirement. To the extent that other non-party Aggrieved Employees signed
7 purported waivers of their right to a day's rest in seven, such waivers are invalid.

8 121. Thus, during the relevant time period, and in violation of California Labor Code
9 sections 551 and 552, Defendants caused other non-party Aggrieved Employees to work more
10 than six days in seven. Other non-party Aggrieved Employees are therefore entitled to recover
11 civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 122. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
20 or equipment are required by the employer or are necessary to the performance of a job, such
21 tools and equipment shall be provided and maintained by the employer, except that an employee
22 whose wages are at least two (2) times the minimum wage may provide and maintain hand tools
23 and equipment customarily required by the particular trade or craft."

24 123. First, Defendants had a company-wide policy of requiring Plaintiff and other
25 non-party Aggrieved Employees to utilize their own personal vehicles to carry out company
26 business, but failed to reimburse them for all costs of travel, including mileage. For example,
27 about three (3) times per week, Plaintiff was required to drive to Defendants' other Taco Bell
28 locations in National City and Mission Valley, California, to obtain ingredients or restaurant

1 supplies. Plaintiff estimates he drove approximately 4-22 miles each trip in order to fulfill his
2 work-related duties. Although Defendants required Plaintiff and other non-party Aggrieved
3 Employees to utilize their own vehicles to carry out their work-related responsibilities,
4 Defendants did not reimburse them for their travel expenses.

5 124. Second, during the relevant time period, Defendants had a company-wide policy
6 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
7 mobile devices, including cellular phones, to carry out their job duties, but Defendants failed to
8 reimburse them for the costs of their work-related mobile device expenses. For example,
9 Plaintiff was required to use their personal mobile device to communicate with crew members,
10 his area manager, and employees at Defendants' other locations regarding scheduling,
11 inventory, and work-related updates. Although Defendants required Plaintiff and other non-
12 party Aggrieved Employees to utilize their personal mobile devices to carry out their work-
13 related responsibilities, Defendants failed to reimburse them for this cost.

14 125. Defendants could have provided Plaintiff and other non-party Aggrieved
15 Employees with the actual equipment for use on the job, such as company vehicles and company
16 mobile devices. Or, Defendants could have reimbursed employees for the costs of their mileage,
17 travel expenses, and mobile device usage. Instead, Defendants passed these operating costs off
18 onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not
19 earn at least two (2) times the minimum wage.

20 126. Defendants' company-wide policy and/or practice of passing on their operating
21 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
22 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
23 non-party Aggrieved Employees for necessary business-related expenses and costs.

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

26 **REQUEST FOR JURY TRIAL**

27 Plaintiff requests a trial by jury.

28 ///

1 **PRAYER FOR RELIEF**

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

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

7 2. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
9 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
10 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
11 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198
12 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
13 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
14 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
15 maintain accurate payroll records); 204 (by failing to timely pay all earned wages during
16 employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246
17 (by failing to properly calculate sick leave pay); 551 and 552 (by failing to provide one day's
18 rest in seven); and 2802 (by failing to reimburse business expenses);

19 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5,
20 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,
21 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198,
22 and 2802;

23 4. For attorneys' fees and costs pursuant to California Labor Code section
24 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
25 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d),
26 1182.12, 1194, 1197, 1198, and 2802;

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

28 ///

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

3
4 Dated: March 6, 2023

Respectfully submitted,

Capstone Law APC

5
6
7 By: 

8 Bevin Allen Pike
9 Daniel S. Jonathan
Trisha K. Monesi

10 Attorneys for Plaintiff Oscar Barba
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EXHIBIT “1”



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December 29, 2022

VIA ONLINE SUBMISSION

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

Subject: *Oscar Barba v. JJC Foods, LLC, et al.*

Dear PAGA Administrator:

This office represents Oscar Barba in connection with his claims under the California Labor Code. Mr. Barba was an employee of JJC FOODS, LLC; CENTURY FAST FOODS, INC.; CENTURY FAST FOODS, LLC; CENTURY FAST FOODS IV, LLC; and/or WEST SIDE FAST FOODS, LLC. For the purpose of this letter, Mr. Barba collectively refers to these entities as "JJC."

The employers may be contacted directly at the addresses below:

JJC FOODS, LLC
12006 TALUS PLACE
BEVERLY HILLS, CA 90210

CENTURY FAST FOODS, INC.
10350 SANTA MONICA BLVD. STE 260
LOS ANGELES, CA 90025

CENTURY FAST FOODS, LLC
10350 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90025

CENTURY FAST FOODS IV, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

WEST SIDE FAST FOODS, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

Mr. Barba intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Barba seeks relief on behalf of himself, the State of California, and other persons who are or were employed by JJC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

JJC employed Mr. Barba as an hourly paid, non-exempt employee from approximately July 2021 to November 2022. Mr. Barba worked for JJC as a General Manager at one of its Taco Bell locations in San Diego, California. During his employment, Mr. Barba typically worked ten (10) or more hours per day and four (4) days per week. Mr. Barba job duties included, without limitation, fulfilling food orders, taking inventory, stocking supplies, providing customer service, and training crew members.

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

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

JJC FOODS, LLC; CENTURY FAST FOODS, LLC; CENTURY FAST FOODS IV, LLC; and WEST SIDE FAST FOODS, LLC are California limited liability companies. CENTURY FAST FOODS, INC. is a California corporation. Together, they own and operate Taco Bell fast food franchises in California. Upon information and belief, JJC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Beverly Hills, California, or Los Angeles, California, for all non-exempt, hourly paid employees working for JJC in California, including Mr. Barba and other aggrieved employees. At all relevant times, JJC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Barba and other aggrieved employees, regardless of its location or position.

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

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

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

¹ These facts, theories, and claims are based on Mr. Barba’s experience and counsel’s review of those records currently available relating to Mr. Barba’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Barba reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant period, JJC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Barba and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, about three (3) times per week before he clocked in for his shifts and/or after he clocked out for his shifts, Mr. Barba was required to travel to other Taco Bell locations 10-20 minutes away to pick up ingredients and supplies needed at his location. Thus, JJC failed to track this time spent working before or after scheduled shifts, and Mr. Barba and other aggrieved employees received no compensation for this time.

Second, during the relevant period, JJC had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulting in a failure to provide Mr. Barba and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Barba and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Barba worked through his meal periods 3-4 times per week because he was required to continue performing his duties, including preparing food orders, attending to customers, and restocking supplies, during his unpaid meal periods. As a further example, Mr. Barba's meal periods were cut short and/or interrupted on a regular basis to answer questions from staff members and to go back to performing his duties due to lack of coverage. Additionally, JJC, on a company-wide basis, had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Barba and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Barba and other aggrieved employees were required to work through and/or had their meal periods interrupted in order to complete their assigned workloads. JJC did not pay Mr. Barba and other aggrieved employees for the time they continued to perform tasks during meal periods.

In addition, on information and belief, JJC's company-wide timekeeping system prevented Mr. Barba and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Barba and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, JJC's timekeeping system further prevented Mr. Barba and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Third, on information and belief, JJC maintained a company-wide on-premises meal period policy, which mandated that Mr. Barba and other aggrieved employees remain on JJC's premises during their unpaid meal periods. Because Mr. Barba and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Barba and other aggrieved employees were unable to take compliant meal periods because they were unable to leave the work premises. Thus, JJC

effectively maintained control over Mr. Barba and other aggrieved employees during their unpaid meal periods.

Fourth, on information and belief, because JJC frowned upon employees accruing meal period penalties, JJC pressured Mr. Barba and other aggrieved employees to clock out for meal periods, on threat of discipline, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that JJC would otherwise owe. For example, Mr. Barba's area manager instructed Mr. Barba to record compliant meal periods on days he missed his meal periods or when his meal periods were interrupted/cut short upon threat of discipline, up to and including termination. Thus, Mr. Barba and other aggrieved employees were required to perform their assigned tasks off-the-clock because JJC wanted to avoid paying penalties for missed or shortened meal periods.

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

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

JJC's failure to pay Mr. Barba and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Barba and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated, during the relevant time period, JJC maintained policies and/or practices requiring Mr. Barba and other aggrieved employees to perform work off-the-clock prior to the start of their shifts and after the end of their shifts, such as traveling to other Taco Bell locations to pick up ingredients and supplies. Further, as also stated above, due to JJC's policies and/or practices of understaffing its

locations while assigning heavy workloads, failing to schedule meal periods, and requiring employees to stay on the work premises during meal periods, Mr. Barba and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, JJC's management pressured employees to record compliant meal periods when meal periods were missed, short, and/or interrupted to reflect compliant meal periods. Moreover, JJC's timekeeping system prevented Mr. Barba and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Barba and other aggrieved employees for a full 30 minutes. Thus, JJC systematically failed to pay Mr. Barba and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, JJC did not pay at least minimum wages for all hours worked by Mr. Barba and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, JJC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, JJC regularly failed to pay at least minimum wages to Mr. Barba and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Barba and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

First, during the relevant time period, as stated, JJC had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, and failing to schedule meal periods, which has resulted in a lack of meal period coverage. As a result, Mr. Barba and other aggrieved employees had to work through all or part of their meal periods, had their meal periods

interrupted, and/or wait extended periods of time before taking meal periods to which they were entitled. For example, due to JJC's policy and/or practice of understaffing while assigning heavy workloads, Mr. Barba's meal periods were missed entirely 3-4 times per week, and often interrupted and/or cut short in order to prepare food orders, assist crew members, and restock supplies.

Furthermore, because JJC frowned upon employees accruing meal period penalties, JJC's management pressured Mr. Barba and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by JJC. For example, Mr. Barba was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

Second, as stated, on information and belief, JJC maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Barba and other aggrieved employees remain on the work premises during the meal periods. Because Mr. Barba and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, JJC effectively maintained control over Mr. Barba and other aggrieved employees during meal periods.

Third, on information and belief, as stated, JJC's company-wide timekeeping system prevented Mr. Barba and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Barba and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Barba had his meal periods interrupted or cut short to go back to assisting customers and crew members, in order to keep up with customer demand and handle the heavy workload, but was unable to record that his meal period was shortened.

Fourth, JJC did not provide Mr. Barba and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Barba and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

JJC knew or should have known that as a result of its company-wide policies and/or practices, Mr. Barba and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. JJC further knew or should have known that it did not pay Mr. Barba and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

Accordingly, JJC failed to provide all meal periods in violation of California Labor Code sections

226.7, 512(a), 516, and 1198. Mr. Barba and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, JJC regularly failed to authorize and permit Mr. Barba and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, JJC's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Barba and other aggrieved employees from being relieved of all duty to take compliant rest periods. JJC also failed to schedule rest periods, which, coupled with JJCS's failure to provide adequate rest period coverage, further led to Mr. Barba and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of JJC's practices and policies, Mr. Barba and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Barba had to forego his rest periods almost entirely because the restaurant was busy and did not have coverage.

JJC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Barba and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that JJC did pay Mr. Barba and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, JJC did not pay Mr.

Barba and other aggrieved employees at the correct rate of pay for premiums because JJC failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

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

In addition, because JJC did not calculate Mr. Barba's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, JJC did not list the correct amount of gross wages earned by Mr. Barba and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Barba and other aggrieved employees in violation of section 226(a)(5). JJC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section

226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), JJC willfully failed to maintain accurate payroll records for Mr. Barba and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, JJC failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Barba and other aggrieved employees, in violation of section 1198. As stated, JJC engaged in a company-wide practice and/or policy of falsifying Mr. Barba’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Barba and other aggrieved employees. Furthermore, in light of JJC’s failure to provide Mr. Barba and other aggrieved employees with second 30-minute meal periods to which they were entitled, JJC kept no records of meal start and end times for second meal periods.

Because JJC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Barba and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Barba and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Barba and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

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

Mr. Barba and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

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

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

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

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt

employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated 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 of employment."

During the relevant time period, JJC did not pay Mr. Barba and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, JJC paid Mr. Barba and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, JJC failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Mr. Barba and/or other aggrieved employees took sick leave and received these other forms of pay, JJC failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, JJC paid Mr. Barba and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

JJC's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Barba and/or other aggrieved employees on a company-wide basis, in violation of Labor Code 246(l). Mr. Barba and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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

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

During the relevant period, on information and belief, JJC required other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. Because other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, JJC caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating

expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, JJC had a company-wide policy of requiring Mr. Barba and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, about three (3) times per week, Mr. Barba was required to drive to JJC’s other Taco Bell locations in National City, and Mission Valley, California, to obtain ingredients or restaurant supplies. Mr. Barba estimates he drove approximately 4-22 miles each trip in order to fulfill his work-related duties. Although JJC required Mr. Barba and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, JJC did not reimburse them for their travel expenses.

Second, during the relevant time period, JJC had a company-wide policy of requiring Mr. Barba and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, to carry out their job duties, but JJC failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Barba was required to use his personal mobile devices to communicate with crew members, his area manager, and other JJC locations regarding scheduling, inventory, and work-related updates. Although JJC required Mr. Barba and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, JJC failed to reimburse them for this cost.

JJC could have provided Mr. Barba and other aggrieved employees with the actual equipment for use on the job, such as company vehicles and company mobile devices. Or, JJC could have reimbursed employees for their mileage; travel expenses; and mobile device usage. Instead, JJC passed these operating costs off onto Mr. Barba and other aggrieved employees.

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

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

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

use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, JJC failed, on a company-wide basis, to provide written notice to Mr. Barba and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). JJC's failure to provide Mr. Barba and other aggrieved employees with written notice of basic information regarding their employment with JJC is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Barba seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Barba, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against JJC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. JJC shall pay Mr. Barba and all other aggrieved employees employed by JJC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. JJC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. JJC shall conduct a survey or interview all current and former aggrieved employees in California who worked for JJC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses; mileage; mobile device expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. JJC shall pay Mr. Barba and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. JJC also shall pay Mr. Barba and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. JJC shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and 246(l).
6. JJC shall reimburse Mr. Barba and all aggrieved employees who were required to pay for any business expenses incurred for JJC's benefit, including, but not limited to, costs of travel expenses, mileage, and/or mobile device usage, as required by Labor Code section 2802.
7. JJC shall pay accrued legal interest to Mr. Barba and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. JJC shall provide Mr. Barba and all aggrieved employees employed by JJC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. JJC shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. JJC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. JJC shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

12. JJC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Sairah Budhwani", with a stylized flourish at the end.

Sairah Budhwani

Copy: JJC FOODS, LLC (via U.S. Certified Mail); CENTURY FAST FOODS, INC. (via U.S. Certified Mail); CENTURY FAST FOODS, LLC (via U.S. Certified Mail); CENTURY FAST FOODS IV, LLC (via U.S. Certified Mail); WEST SIDE FAST FOODS, LLC (via U.S. Certified Mail)

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



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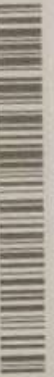
CERTIFIED MAIL

JJC FOODS, LLC
12006 TALUS PLACE
BEVERLY HILLS, CA 90210

SENDER: COMPLETE THIS SECTION

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

JJC FOODS, LLC
12006 TALUS PLACE
BEVERLY HILLS, CA 90210



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

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A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

- | | |
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| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | ☐ Restricted Delivery |
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JJC FOODS, LLC
12006 TALUS PLACE
BEVERLY HILLS, CA 90210

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



7022 2410 0000 2406 2730

CENTURY EAST FOODS, INC.
10350 SANTA MONICA BLVD, STE 260
LOS ANGELES, CA 90025

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

CENTURY EAST FOODS, INC.
10350 SANTA MONICA BLVD, STE 260
LOS ANGELES, CA 90025

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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

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

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1. Enter ZIP Code & 5-digit delivery point, and fee as appropriate

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10350 SANTA MONICA BLVD, STE 260
LOS ANGELES, CA 90025

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

CERTIFIED MAIL



7022 2410 0000 2406 2747

CENTURY FAST FOODS, LLC
10350 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90025

SENDER: COMPLETE THIS SECTION

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

CENTURY FAST FOODS, LLC
10350 SANTA MONICA BOULEVARD
LOS ANGELES, CA 90025

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

Adult Signature

Adult Signature Restricted Delivery

Certified Mail

Certified Mail Restricted Delivery

Collect on Delivery

Collect on Delivery Restricted Delivery

Insured Mail

Insured Mail Restricted Delivery

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

CERTIFIED MAIL



7022 2410 0000 2406 2754

CENTURY FAST FOODS IV, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

SENDER: COMPLETE THIS SECTION

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

CENTURY FAST FOODS IV, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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



2. 7022 2410 0000 2406 2754

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

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

Domestic Return Receipt

7022 2410 0000 2406 2754

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

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

OFFICIAL USE

Certified Mail Fee

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

Postmark

Mark

10350 SANTA MONICA BLVD., SUITE 260

LOS ANGELES, CA 90025

CENTURY FAST FOODS IV, LLC

Instructions

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

7022 2410 0000 2406 2761



CERTIFIED MAIL

WEST SIDE FAST FOODS, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

SENDER: COMPLETE THIS SECTION

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

WEST SIDE FAST FOODS, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

COMPLETE THIS SECTION ON DELIVERY

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

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

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

7022 2410 0000 2406 2761

7022 2410 0000 2406 2761

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

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

OFFICIAL USE

Extra Services & Fees (Attach box and fee as appropriate)	Postmark
☐ Return Receipt (hardcopy)	
☐ Insured (except restricted)	
☐ Certified Mail Restricted Delivery	

WEST SIDE FAST FOODS, LLC
10350 SANTA MONICA BLVD., SUITE 260
LOS ANGELES, CA 90025

SENDER: COMPLETE THIS SECTION

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

**JJC FOODS, LLC
12006 TALUS PLACE
BEVERLY HILLS, CA 90210**



2. Article Number (Transit from Service Label)

7022 2410 0000 2406 2723

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

12-31-22

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Mail Restricted Delivery (00) | |